EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 2005, with exception for any FASIT in existence on Oct. 22, 2004, to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance, see section 835(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

Subchapter N—Tax Based on Income From Sources Within or Without the United States

Part
I. Source rules and other general rules relating to foreign income.
II. Nonresident aliens and foreign corporations.
III. Income from sources without the United States.
IV. Domestic international sales corporations.[1]
V. International boycott determinations.

AMENDMENTS

1988—Pub. L. 100–647, title I, §1012(h)(2)(D), Nov. 10, 1988, 102 Stat. 3503, substituted ''Source rules and other general rules relating to foreign income'' for ''Determination of sources of income'' in item for part I.

1976—Pub. L. 94–455, title X, §1064(b), Oct. 4, 1976, 90 Stat. 1653, added item V.

PART I—SOURCE RULES AND OTHER GENERAL RULES RELATING TO FOREIGN INCOME

Sec.
861. Income from sources within the United States.
862. Income from sources without the United States.
863. Special rules for determining source.
864. Definitions and special rules.
865. Source rules for personal property sales.

AMENDMENTS

1988—Pub. L. 100–647, title I, §§1012(e)(3)(B), (h)(2)(C), 1018(u)(37), Nov. 11, 1988, 102 Stat. 3500, 3502, 3592, substituted ''SOURCE RULES AND OTHER GENERAL RULES RELATING TO FOREIGN INCOME'' for ''DETERMINATION OF SOURCES OF INCOME'' as part I heading, substituted ''Special rules for determining source'' for ''Items not specified in section 861 or 862'' in item 863, and added item 865.

1986—Pub. L. 99–514, title XII, §1215(b)(2), Oct. 22, 1986, 100 Stat. 2545, substituted ''Definitions and special rules'' for ''Definitions'' in item 864.

§ 861. Income from sources within the United States

(a) Gross income from sources within United States

The following items of gross income shall be treated as income from sources within the United States:

(1) Interest

Interest from the United States or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of noncorporate residents or domestic corporations not including—

(A) interest—

(i) on deposits with a foreign branch of a domestic corporation or a domestic partnership if such branch is engaged in the commercial banking business, and

(ii) on amounts satisfying the requirements of subparagraph (B) of section 871(i)(3) which are paid by a foreign branch of a domestic corporation or a domestic partnership, and

(B) in the case of a foreign partnership, which is predominantly engaged in the active conduct of a trade or business outside the United States, any interest not paid by a trade or business engaged in by the partnership in the United States and not allocable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(2) Dividends

The amount received as dividends—

(A) from a domestic corporation other than a corporation which has an election in effect under section 936, or

(B) from a foreign corporation unless less than 25 percent of the gross income from all sources of such foreign corporation for the 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was effectively connected (or treated as effectively connected other than income described in section 884(d)(2)) with the conduct of a trade or business within the United States; but only in an amount which bears the same ratio to such dividends as the gross income of the corporation for such period which was effectively connected (or treated as effectively connected other than income described in section 884(d)(2)) with the conduct of a trade or business within the United States bears to its gross income from all sources; but dividends (other than dividends for which a deduction is allowable under section 245(b)) from a foreign corporation shall, for purposes of subpart A of part III (relating to foreign tax credit), be treated as income from sources without the United States to the extent (and only to the extent) exceeding the amount which is 100/70th of the amount of the deduction allowable under section 245 in respect of such dividends, or

(C) from a foreign corporation to the extent that such amount is required by section 243(e) (relating to certain dividends from foreign corporations) to be treated as dividends from a domestic corporation which is subject to taxation under this chapter, and to such extent subparagraph (B) shall not apply to such amount, or

(D) from a DISC or former DISC (as defined in section 992(a)) except to the extent attributable (as determined under regulations prescribed by the Secretary) to qualified export receipts described in section 993(a)(1) (other than interest and gains described in section 995(b)(1)).

In the case of any dividend from a 20-percent owned corporation (as defined in section 243(c)(2)), subparagraph (B) shall be applied by substituting ''100/80th'' for ''100/70th''.

[1] Editorially supplied. Part IV added by Pub. L. 92–178 without corresponding amendment of subchapter analysis.

(3) Personal services

Compensation for labor or personal services performed in the United States; except that compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if—

(A) the labor or services are performed by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year,

(B) such compensation does not exceed $3,000 in the aggregate, and

(C) the compensation is for labor or services performed as an employee of or under a contract with—

(i) a nonresident alien, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

(ii) an individual who is a citizen or resident of the United States, a domestic partnership, or a domestic corporation, if such labor or services are performed for an office or place of business maintained in a foreign country or in a possession of the United States by such individual, partnership, or corporation.

In addition, compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if the labor or services are performed by a nonresident alien individual in connection with the individual's temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States.

(4) Rentals and royalties

Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property.

(5) Disposition of United States real property interest

Gains, profits, and income from the disposition of a United States real property interest (as defined in section 897(c)).

(6) Sale or exchange of inventory property

Gains, profits, and income derived from the purchase of inventory property (within the meaning of section 865(i)(1)) without the United States (other than within a possession of the United States) and its sale or exchange within the United States.

(7) Amounts received as underwriting income (as defined in section 832(b)(3)) derived from the issuing (or reinsuring) of any insurance or annuity contract—

(A) in connection with property in, liability arising out of an activity in, or in connection with the lives or health of residents of, the United States, or

(B) in connection with risks not described in subparagraph (A) as a result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect to issuing (or reinsuring) any insurance or annuity contract in connection with property in, liability arising out of activity in, or in connection with the lives or health of residents of, the United States.

(8) Social security benefits

Any social security benefit (as defined in section 86(d)).

(9) Guarantees

Amounts received, directly or indirectly, from—

(A) a noncorporate resident or domestic corporation for the provision of a guarantee of any indebtedness of such resident or corporation, or

(B) any foreign person for the provision of a guarantee of any indebtedness of such person, if such amount is connected with income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(b) Taxable income from sources within United States

From the items of gross income specified in subsection (a) as being income from sources within the United States there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as taxable income from sources within the United States. In the case of an individual who does not itemize deductions, an amount equal to the standard deduction shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

(c) Special rule for application of subsection (a)(2)(B)

For purposes of subsection (a)(2)(B), if the foreign corporation has no gross income from any source for the 3-year period (or part thereof) specified, the requirements of such subsection shall be applied with respect to the taxable year of such corporation in which the payment of the dividend is made.

(d) Income from certain railroad rolling stock treated as income from sources within the United States

(1) General rule

For purposes of subsection (a) and section 862(a), if—

(A) a taxpayer leases railroad rolling stock which is section 1245 property (as defined in section 1245(a)(3)) to a domestic common carrier by railroad or a corporation which is controlled, directly or indirectly, by one or more such common carriers, and

(B) the use under such lease is expected to be use within the United States,

all amounts includible in gross income by the taxpayer with respect to such railroad rolling stock (including gain from sale or other disposition of such railroad rolling stock) shall be treated as income from sources within the United States. The requirements of subparagraph (B) of the preceding sentence shall be treated as satisfied if the only expected use outside the United States is use by a person (whether or not a United States person) in Canada or Mexico on a temporary basis which is not expected to exceed a total of 90 days in any taxable year.

(2) Paragraph (1) not to apply where lessor is a member of controlled group which includes a railroad

Paragraph (1) shall not apply to a lease between two members of the same controlled group of corporations (as defined in section 1563) if any member of such group is a domestic common carrier by railroad or a switching or terminal company all of whose stock is owned by one or more domestic common carriers by railroad.

(3) Denial of foreign tax credit

No credit shall be allowed under section 901 for any payments to foreign countries with respect to any amount received by the taxpayer with respect to railroad rolling stock which is subject to paragraph (1).

(e) Cross reference

For treatment of interest paid by the branch of a foreign corporation, see section 884(f).

(Aug. 16, 1954, ch. 736, 68A Stat. 275; Pub. L. 86–779, § 3(b), Sept. 14, 1960, 74 Stat. 998; Pub. L. 87–834, § 9(c), Oct. 16, 1962, 76 Stat. 1001; Pub. L. 89–809, title I, § 102(a)(1)–(3), (b), (c), Nov. 13, 1966, 80 Stat. 1541–1543; Pub. L. 91–172, title IV, § 435(a), Dec. 30, 1969, 83 Stat. 625; Pub. L. 92–9, § 3(a)(2), Apr. 1, 1971, 85 Stat. 15; Pub. L. 92–178, title III, § 314(a), title V, § 503, Dec. 10, 1971, 85 Stat. 528, 550; Pub. L. 93–625, §§ 8, 9(a), Jan. 3, 1975, 88 Stat. 2116; Pub. L. 94–455, title X, §§ 1036(a), 1041, 1051(h)(3), title XIX, §§ 1901(b)(26)(A), (B), (c)(7), 1904(b)(10)(B), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1633, 1634, 1647, 1798, 1803, 1817, 1834; Pub. L. 95–30, title I, § 102(b)(9), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title III, § 370(a), title V, § 540(a), Nov. 6, 1978, 92 Stat. 2858, 2887; Pub. L. 96–499, title XI, § 1124, Dec. 5, 1980, 94 Stat. 2690; Pub. L. 96–605, title I, § 104(a), Dec. 28, 1980, 94 Stat. 3523; Pub. L. 98–21, title I, § 121(d), Apr. 20, 1983, 97 Stat. 83; Pub. L. 99–514, title I, § 104(b)(11), title XII, §§ 1211(b)(1)(B), 1212(d), 1214(a), (b), (c)(5), 1241(b), Oct. 22, 1986, 100 Stat. 2105, 2536, 2539, 2541–2543, 2579; Pub. L. 100–203, title X, § 10221(d)(4), Dec. 22, 1987, 101 Stat. 1330–409; Pub. L. 100–647, title I, §§ 1012(g)(3), (i)(10), (14)(B), (q)(7), (9), (15), 1018(u)(39), Nov. 10, 1988, 102 Stat. 3501, 3509, 3510, 3524, 3525, 3592; Pub. L. 101–239, title VII, §§ 7811(i)(2), 7841(d)(9), Dec. 19, 1989, 103 Stat. 2409, 2428; Pub. L. 101–508, title XI, §§ 11801(a)(29), (c)(6)(C), (14), 11813(b)(17), Nov. 5, 1990, 104 Stat. 1388–521, 1388–524, 1388–527, 1388–555; Pub. L. 104–188, title I, § 1702(h)(9), Aug. 20, 1996, 110 Stat. 1874; Pub. L. 105–34, title XI, § 1174(a)(1), Aug. 5, 1997, 111 Stat. 989; Pub. L. 107–16, title VI, § 621(a), June 7, 2001, 115 Stat. 111; Pub. L. 108–357, title IV, § 410(a), Oct. 22, 2004, 118 Stat. 1500; Pub. L. 111–226, title II, § 217(a), (c)(1), Aug. 10, 2010, 124 Stat. 2400, 2402; Pub. L. 111–240, title II, § 2122(a), Sept. 27, 2010, 124 Stat. 2567.)

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–226, § 217(a), redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: ''interest from a resident alien individual or domestic corporation, if such individual or corporation meets the 80-percent foreign business requirements of subsection (c)(1),''.

Subsec. (a)(9). Pub. L. 111–240 added par. (9).

Subsecs. (c) to (f). Pub. L. 111–226, § 217(c)(1), redesignated subsecs. (d) to (f) as (c) to (e), respectively, and struck out former subsec. (c) which related to foreign business requirements.

2004—Subsec. (a)(1)(C). Pub. L. 108–357 added subpar. (C).

2001—Subsec. (a)(3). Pub. L. 107–16 struck out ''except for purposes of sections 79 and 105 and subchapter D,'' after ''In addition,'' in concluding provisions.

1997—Subsec. (a)(3). Pub. L. 105–34 inserted concluding provisions ''In addition, except for purposes of sections 79 and 105 and subchapter D, compensation for labor or services performed in the United States shall not be deemed to be income from sources within the United States if the labor or services are performed by a nonresident alien individual in connection with the individual's temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States.''

1996—Subsec. (e)(1)(A). Pub. L. 104–188 provided that the amendment made by section 11813(b)(17) of Pub. L. 101–508 shall be applied as if the material stricken by such amendment included the closing parenthesis after ''section 48(a)(5)''. See 1990 Amendment note below.

1990—Subsec. (a)(1)(A), (B). Pub. L. 101–508, § 11801(a)(29), (c)(14), inserted ''and'' at end of subpar. (A), substituted a period for a comma at end of subpar. (B), and struck out subpars. (C) and (D) which read as follows:

''(C) interest on a debt obligation which was part of an issue with respect to which an election has been made under subsection (c) of section 4912 (as in effect before July 1, 1974) and which, when issued (or treated as issued under subsection (c)(2) of such section), had a maturity not exceeding 15 years and, when issued, was purchased by one or more underwriters with a view to distribution through resale, but only with respect to interest attributable to periods after the date of such election, and

''(D) interest on a debt obligation which was part of an issue which—

''(i) was part of an issue outstanding on April 1, 1971,

''(ii) was guaranteed by a United States person,

''(iii) was treated under chapter 41 as a debt obligation of a foreign obligor,

''(iv) as of June 30, 1974, had a maturity of not more than 15 years, and

''(v) when issued, was purchased by one or more underwriters for the purpose of distribution through resale.''

Subsec. (e)(1)(A). Pub. L. 101–508, § 11813(b)(17), which directed the substitution of ''which is section 1245 property (as defined in section 1245(a)(3))'' for ''which is section 38 property (or would be section 38 property but for section 48(a)(5)'', was executed by making the substitution for ''which is section 38 property (or would be section 38 property but for section 48(a)(5))''. See 1996 Amendment note above.

Subsec. (e)(2). Pub. L. 101–508, § 11801(c)(6)(C), substituted ''all of whose stock is owned by one or more domestic common carriers by railroad'' for ''referred to in subparagraph (B) of section 184(d)(1)''.

1989—Subsec. (a)(6). Pub. L. 101–239, § 7811(i)(2), substituted ''865(i)(1)'' for ''865(h)(1)''.

Subsec. (e)(1). Pub. L. 101–239, §7841(d)(9), substituted ''section 862(a)'' for ''section 826(a)'' in introductory provisions.

1988—Subsec. (a)(2)(B). Pub. L. 100–647, §1012(q)(7), substituted ''other than income described in section 884(d)(2)'' for ''other than under section 884(d)(2)'' in two places.

Subsec. (a)(2)(C). Pub. L. 100–647, §1012(q)(15), substituted ''section 243(e)'' for ''section 243(d)''.

Subsec. (a)(6). Pub. L. 100–647, §1018(u)(39), substituted ''inventory property'' for ''personal property'' in heading.

Subsec. (a)(7). Pub. L. 100–647, §1012(i)(10), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''Amounts received as underwriting income (as defined in section 832(b)(3)) derived from the insurance of United States risks (as defined in section 953(a)).''

Subsec. (c)(1)(B). Pub. L. 100–647, §1012(g)(3), inserted ''or, in the case of a corporation, is attributable to income so derived by a subsidiary of such corporation'' after parenthetical in cl. (i), struck out ''or chain of subsidiaries of such corporation'' after ''by a subsidiary'' in cl. (ii), and inserted sentence at end defining ''subsidiary''.

Subsec. (c)(2)(B)(ii). Pub. L. 100–647, §1012(i)(14)(B), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''such section shall be applied by substituting '10 percent' for '50 percent' each place it appears.''

Subsec. (f). Pub. L. 100–647, §1012(g)(9), added subsec. (f).

1987—Subsec. (a)(2). Pub. L. 100–203, §10221(d)(4)(B), inserted at end ''In the case of any dividend from a 20-percent owned corporation (as defined in section 243(c)(2)), subparagraph (B) shall be applied by substituting '100/80th' for '100/70th'.''

Subsec. (a)(2)(B). Pub. L. 100–203, §10221(d)(4)(A), which directed that subpar. (B) be amended by substituting ''100/70th'' for ''100/85th'', was executed by substituting ''100/70th'' for ''100/85ths'' to reflect the probable intent of Congress.

1986—Subsec. (a)(1). Pub. L. 99–514, §1241(b)(1)(A), substituted ''noncorporate residents or domestic corporations'' for ''residents, corporate or otherwise,'' in introductory text.

Subsec. (a)(1)(A). Pub. L. 99–514, §1214(a)(1), (c)(5)(A), amended subpar. (B) generally and redesignated it as (A). Prior to amendment and redesignation, former subpar. (B) read as follows: ''interest received from a resident alien individual or a domestic corporation, when it is shown to the satisfaction of the Secretary that less than 20 percent of the gross income from all sources of such individual or such corporation has been derived from sources within the United States, as determined under the provisions of this part, for the 3-year period ending with the close of the taxable year of such individual or such corporation preceding the payment of such interest, or for such part of such period as may be applicable,''. Former subpar. (A), which read ''interest on amounts described in subsection (c) received by a nonresident alien individual or a foreign corporation, if such interest is not effectively connected with the conduct of a trade or business within the United States,'', was struck out.

Subsec. (a)(1)(B). Pub. L. 99–514, §1241(b)(1)(B), redesignated subpar. (D), as previously redesignated and amended by §1214(c)(5)(A), (B) of Pub. L. 99–514, as (B) and struck out former subpar. (B) [previously (C)] which read as follows: ''interest received from a foreign corporation (other than interest paid or credited by a domestic branch of a foreign corporation, if such branch is engaged in the commercial banking business), when it is shown to the satisfaction of the Secretary that less than 50 percent of the gross income from all sources of such foreign corporation for the 3-year period ending with the close of its taxable year preceding the payment of such interest (or for such part of such period as the corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States,''.

Pub. L. 99–514, §1214(c)(5)(A), (B), redesignated former subpar. (F) as (D), substituted in cl. (ii), ''subparagraph (B) of section 871(i)(3)'' for ''paragraph (2) of subsection (c)'', and redesignated former subpar. (C) as (B). Former subpar. (B) redesignated (A).

Subsec. (a)(1)(C). Pub. L. 99–514, §1241(b)(1)(B), redesignated subpar. (E), as previously redesignated by §1214(c)(5)(A) of Pub. L. 99–514, as (C) and struck out former subpar. (C) [previously (D)] which read as follows: ''in the case of interest received from a foreign corporation (other than interest paid or credited by a domestic branch of a foreign corporation, if such branch is engaged in the commercial banking business), 50 percent or more of the gross income of which from all sources for the 3-year period ending with the close of its taxable year preceding the payment of such interest (or for such part of such period as the corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States, an amount of such interest which bears the same ratio to such interest as the gross income of such foreign corporation for such period which was not effectively connected with the conduct of a trade or business within the United States bears to its gross income from all sources,''.

Pub. L. 99–514, §1214(c)(5)(A), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Subsec. (a)(1)(D). Pub. L. 99–514, §1214(c)(5)(A), redesignated subpar. (H) as (F). Pub. L. 99–514, §1241(b)(1)(B), then redesignated such subpar. (F) as (D). The original subpar. (D) was redesignated (C) and struck out, and the original subpar. (F) was redesignated (D), then (B).

Subsec. (a)(1)(E). Pub. L. 99–514, §1241(b)(1)(B), redesignated subpar. (E), as previously redesignated by §1214(c)(5)(A) of Pub. L. 99–514, as (C).

Pub. L. 99–514, §1214(c)(5)(A), redesignated subpar. (G) as (E) and struck out former subpar. (E) which read as follows: ''income derived by a foreign central bank of issue from bankers' acceptances,''.

Subsec. (a)(1)(F). Pub. L. 99–514, §§1214(c)(5)(A), 1241(b)(1)(B), redesignated successively former subpar. (F) as (D) and (B), respectively.

Subsec. (a)(1)(G). Pub. L. 99–514, §§1214(c)(5)(A), 1241(b)(1)(B), redesignated successively former subpar. (G) as (E) and (C), respectively.

Subsec. (a)(1)(H). Pub. L. 99–514, §§1214(c)(5)(A), 1241(b)(1)(B), redesignated successively former subpar. (H) as (F) and (D), respectively.

Subsec. (a)(2)(A). Pub. L. 99–514, §1214(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''from a domestic corporation other than a corporation which has an election in effect under section 936, and other than a corporation less than 20 percent of whose gross income is shown to the satisfaction of the Secretary to have been derived from sources within the United States, as determined under the provisions of this part, for the 3-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence), or''.

Subsec. (a)(2)(B). Pub. L. 99–514, §1241(b)(2), substituted ''25 percent'' for ''50 percent'' and inserted ''(or treated as effectively connected other than under section 884(d)(2))'' in two places.

Subsec. (a)(6). Pub. L. 99–514, §1211(b)(1)(B), substituted ''inventory property (within the meaning of section 865(h)(1))'' for ''personal property''.

Subsec. (b). Pub. L. 99–514, §104(b)(11), substituted ''the standard deduction'' for ''the zero bracket amount''.

Subsec. (c). Pub. L. 99–514, §1214(a)(2), amended subsec. (c) generally, substituting provisions relating to foreign business requirements for provisions relating to interest on deposits.

Subsec. (d). Pub. L. 99–514, §1214(c)(5)(C), amended subsec. (d) generally, substituting provision for special rule for application of subsec. (a)(2)(B) for former provision for special rules for application of subsec. (a), pars. (1)(B) to (1)(D) and (2)(B), pars. (1) and (2) thereof relating to new entities and transition rule provisions.

Subsecs. (e), (f). Pub. L. 99–514, § 1212(d), redesignated subsec. (f) as (e) and struck out former subsec. (e) relating to treatment of income from certain leased aircraft, vessels, and spacecraft as income from sources within the United States.

1983—Subsec. (a)(8). Pub. L. 98–21 added par. (8).

1980—Subsec. (a)(5). Pub. L. 96–499 substituted ''Disposition of United States real property interest'' for ''Sale or exchange of real property'' in heading and ''disposition of a United States real property interest (as defined in section 897(c))'' for ''sale or exchange of real property located in the United States'' in text.

Subsec. (e). Pub. L. 96–605 substituted provision directing that income from certain leased aircraft, vessels, and spacecraft be treated as income from sources within the United States for provision permitting the taxpayer to elect to treat income from certain aircraft and vessels as income from sources within the United States and prescribing the manner of revocating such an election.

1978—Subsec. (a)(1)(F). Pub. L. 95–600, § 540(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (f). Pub. L. 95–600, § 370(a), added subsec. (f).

1977—Subsec. (b). Pub. L. 95–30 provided that, in the case of an individual who does not itemize deductions, an amount equal to the zero bracket amount shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

1976—Subsec. (a)(1). Pub. L. 94–455, §§ 1901(c)(7), 1904(b)(10)(B), struck out '', any Territory, any political subdivision of a Territory,'' after ''United States'' in provisions preceding subpar. (A) and, in subpar. (G), substituted ''subsection (c) of section 4912 (as in effect before July 1, 1974)'' for ''section 4912(c)'' and ''subsection (c)(2) of such section'' for ''section 4912(c)(2)''.

Subsec. (a)(2)(A). Pub. L. 94–455, §§ 1051(h)(3), 1906(b)(13)(A), substituted ''other than a corporation which has an election in effect under section 936'' for ''other than a corporation entitled to the benefits of section 931'' and struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(2)(D). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(5), (6). Pub. L. 94–455, § 1901(b)(26)(A), substituted ''sale or exchange'' for ''sale'' in headings and text.

Subsec. (a)(7). Pub. L. 94–455, § 1036(a), added par. (7).

Subsec. (c)(3). Pub. L. 94–455, § 1041, struck out provision that subsecs. (a)(1)(A) and (c) would cease to apply effective with respect to amounts paid or credited after Dec. 31, 1976.

Subsec. (e)(1). Pub. L. 94–455, § 1901(b)(26)(B), substituted ''sale, exchange, or other disposition'' for ''sale or other disposition''.

Subsecs. (e)(2), (3). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1975—Subsec. (a)(1)(H). Pub. L. 93–625, § 9(a), added subpar. (H).

Subsec. (c)(3). Pub. L. 93–625, § 8, substituted ''1976'' for ''1975''.

1971—Subsec. (a)(1)(G). Pub. L. 92–9 added subpar. (G).

Subsec. (a)(2)(D). Pub. L. 92–178, § 503, added subpar. (D).

Subsec. (e). Pub. L. 92–178, § 314(a), added subsec. (e).

1969—Subsec. (a)(1)(C), (D). Pub. L. 91–172, § 435(a)(1), struck out ''after December 31, 1972,'' after ''interest paid or credited'' in parenthetical after ''interest received from a foreign corporation''.

Subsec. (c)(3). Pub. L. 91–172, § 435(a)(2), substituted ''1975'' for ''1972''.

1966—Subsec. (a)(1)(A). Pub. L. 89–809, § 102(a)(1)(A), substituted ''interest on amounts described in subsection (c) received by a nonresident alien individual or a foreign corporation, if such interest is not effectively connected with the conduct of a trade or business within the United States'' for ''interest on deposits with persons carrying on the banking business paid to persons not engaged in business within the United States''.

Subsec. (a)(1)(B). Pub. L. 89–809, § 102(a)(2), struck out interest received from a resident foreign corporation, and substituted ''gross income from all sources of such individual or such corporation'' for ''gross income of such resident payor or domestic corporation'', and ''taxable year of such individual or such corporation'' for ''taxable year of such payor''.

Subsec. (a)(1)(C) to (F). Pub. L. 89–809, § 102(a)(2), added subpars. (C), (D), and (F), and redesignated former subpar. (C) as (E).

Subsec. (a)(2)(B). Pub. L. 89–809, § 102(b), substituted ''50 percent of the gross income from all sources'' for ''50 percent of the gross income'', ''effectively connected with the conduct of a trade or business within the United States'' for ''derived from sources within the United States as determined from the provisions of this part'', and ''ratio to such dividends as the gross income of the corporation for such period which was effectively connected with the conduct of a trade or business within the United States bears to its gross income from all sources'' for ''ratio to such dividends as the gross income of the corporation for such period derived from sources within the United States bears to its gross income from all sources'' and inserted ''(other than dividends for which a deduction is allowable under section 245(b))'' after ''dividends'' and ''(and only to the extent)'' after ''extent''.

Subsec. (a)(3)(C)(ii). Pub. L. 89–809, § 102(c), inserted ''an individual who is a citizen or resident of the United States, a domestic partnership, or'' before ''a domestic corporation'' and ''individual, partnership, or'' after ''United States by such''.

Subsecs. (c), (d). Pub. L. 89–809, § 102(a)(1)(B), (3), added subsecs. (c) and (d).

1962—Subsec. (a)(2)(B). Pub. L. 87–834 substituted ''to the extent exceeding the amount which is 100/85ths of the amount of the deduction allowable under section 245 in respect of such dividends'' for ''to the extent exceeding the amount of the deduction allowable under section 245 in respect of such dividends.''

1960—Subsec. (a)(2)(C). Pub. L. 86–779 added subpar. (C).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, § 2122(d), Sept. 27, 2010, 124 Stat. 2568, provided that: ''The amendments made by this section [amending this section and sections 862 and 864 of this title] shall apply to guarantees issued after the date of the enactment of this Act [Sept. 27, 2010].''

Pub. L. 111–226, title II, § 217(d), Aug. 10, 2010, 124 Stat. 2402, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 871, 904, and 2104 of this title] shall apply to taxable years beginning after December 31, 2010.

''(2) GRANDFATHER RULE FOR OUTSTANDING DEBT OBLIGATIONS.—

''(A) IN GENERAL.—The amendments made by this section shall not apply to payments of interest on obligations issued before the date of the enactment of this Act [Aug. 10, 2010].

''(B) EXCEPTION FOR RELATED PARTY DEBT.—Subparagraph (A) shall not apply to any interest which is payable to a related person (determined under rules similar to the rules of section 954(d)(3)).

''(C) SIGNIFICANT MODIFICATIONS TREATED AS NEW ISSUES.—For purposes of subparagraph (A), a significant modification of the terms of any obligation (including any extension of the term of such obligation) shall be treated as a new issue.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, § 410(b), Oct. 22, 2004, 118 Stat. 1500, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2003.''

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, § 621(b), June 7, 2001, 115 Stat. 111, provided that: ''The amendment made by sub-

section (a) [amending this section] shall apply to remuneration for services performed in plan years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to remuneration for services performed in taxable years beginning after Dec. 31, 1997, see section 1174(c) of Pub. L. 105–34, set out as a note under section 7701 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11813(b)(17) of Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(i)(2) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years ending after such date, see section 10221(e)(1) of Pub. L. 100–203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(11) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1211(b)(1)(B) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Amendment by section 1212(d) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with special rules for certain leased property and for certain ships leased by United States Navy, see section 1212(f) of Pub. L. 99–514, set out as a note under section 863 of this title.

Section 1214(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1012(g)(1)(A), (2), Nov. 10, 1988, 102 Stat. 3500, 3501, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 871, 881, 1441, and 6049 of this title] shall apply to payments made in a taxable year of the payor beginning after December 31, 1986.

''(2) TREATMENT OF CERTAIN INTEREST.—

''(A) IN GENERAL.—The amendments made by this section shall not apply to any interest paid or accrued on any obligation outstanding on December 31, 1985. The preceding sentence shall not apply to any interest paid pursuant to any extension or renewal of such an obligation agreed to after December 31, 1985.

''(B) SPECIAL RULE FOR RELATED PAYEE.—If the payee of any interest to which subparagraph (A) applies is related (within the meaning of section 904(d)(2)(H) of the Internal Revenue Code of 1986) to the payor, such interest shall be treated for purposes of section 904 of such Code as if the payor were a controlled foreign corporation (within the meaning of section 957(a) of such Code).

''(3) TRANSITIONAL RULE.—

''(A) YEARS BEFORE 1988.—In applying the amendments made by this section to any payment made by a corporation in a taxable year of such corporation beginning before January 1, 1988, the requirements of clause (ii) of [former] section 861(c)(1)(B) of the Internal Revenue Code of 1986 (relating to active business requirements), as amended by this section, shall not apply to gross income of such corporation for taxable years beginning before January 1, 1987.

''(B) YEARS AFTER 1987.—In applying the amendments made by this section to any payment made by a corporation in a taxable year of such corporation beginning after December 31, 1987, the testing period for purposes of [former] section 861(c) of such Code (as so amended) shall not include any taxable year beginning before January 1, 1987.

''(4) CERTAIN DIVIDENDS.—

''(A) IN GENERAL.—The amendments made by this section shall not apply to any dividend paid before January 1, 1991, by a qualified corporation with respect to stock which was outstanding on May 31, 1985.

''(B) QUALIFIED CORPORATION.—For purposes of subparagraph (A), the term 'qualified corporation' means any business systems corporation which—

''(i) was incorporated in Delaware in February, 1979,

''(ii) is headquartered in Garden City, New York, and

''(iii) the parent corporation of which is a resident of Sweden.''

[Section 1012(g)(1)(B) of Pub. L. 100–647 provided that: ''A taxpayer may elect not to have the amendment made by subparagraph (A) [amending section 1214(d)(1) of Pub. L. 99–514, set out above] apply and to have section 1214(d)(1) of the Reform Act [section 1214(d)(1) of Pub. L. 99–514, set out above] apply as in effect before such amendment. Such election shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.'']

Amendment by section 1241(b) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1241(e) of Pub. L. 99–514, set out as an Effective Date note under section 884 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as an Effective Date note under section 86 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 104(b) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to property first leased after the date of the enactment of this Act [Dec. 28, 1980].''

Amendment by Pub. L. 96–499 applicable to dispositions after June 18, 1980, see section 1125(a) of Pub. L. 96–499, set out as an Effective Date note under section 897 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 370(b) of Pub. L. 95–600 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to all railroad rolling stock placed in service with respect to the taxpayer after the date of the enactment of this Act [Nov. 6, 1978].

''(2) ELECTION TO EXTEND SECTION 861(f) [now 861(e)] TO RAILROAD ROLLING STOCK PLACED IN SERVICE BEFORE DATE OF ENACTMENT.

''(A) IN GENERAL.—At the election of the taxpayer, the amendment made by subsection (a) shall also apply, for taxable years beginning after the date of the enactment of this Act, to all railroad rolling stock placed in service with respect to the taxpayer on or before such date of enactment. Such an election may not be revoked except with the consent of the Secretary of the Treasury or his delegate.

''(B) MANNER AND TIME OF ELECTION AND REVOCATION.—An election under subparagraph (A), and any revocation of such an election, shall be made in such manner and at such time as the Secretary of the Treasury or his delegate may by regulations prescribe.''

Section 540(b) of Pub. L. 95–600 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 6, 1978].''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1036(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and section 862 of this title] shall apply to taxable years beginning after December 31, 1976.''

For effective date of amendment by section 1051(h)(3) of Pub. L. 94–455, see section 1051(i)(1) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(b)(26)(A), (B), (c)(7) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by section 1904(b)(10)(B) of Pub. L. 94–455 effective on first day of first month which begins more than 90 days after date of enactment of this Act [Oct. 4, 1976], see section 1904(d) of Pub. L. 94–455, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 9(c) of Pub. L. 93–625 provided that: ''The amendment made by subsection (a) [amending this section] applies to interest paid after the date of enactment of this Act [Jan. 3, 1975], and the amendment made by subsection (b) [amending section 2104 of this title] applies with respect to estates of decedents dying after such date.''

EFFECTIVE DATE OF 1971 AMENDMENTS

Section 3(a)(3) of Pub. L. 92–9 provided that: ''The amendments made by this subsection [amending this section and section 4912 of this title] shall take effect on the date of the enactment of this Act [Apr. 1, 1971].''

Section 314(c) of Pub. L. 92–178 provided that: ''The amendments made by this section [amending this section and section 862 of this title] shall apply to taxable years ending after August 15, 1971, but only with respect to leases entered into after such date.''

Amendment by section 503 of Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 435(a)(1) of Pub. L. 91–172 provided that the amendment made by that section is effective with respect to amounts paid or credited after Dec. 31, 1969.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 102(e) of Pub. L. 89–809, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendments made by subsections (a), (c), and (d) [amending this section and sections 864 and 895 of this title] shall apply with respect to taxable years beginning after December 31, 1966; except that in applying section 864(c)(4)(B)(iii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (d)) with respect to a binding contract entered into on or before February 24, 1966, activities in the United States on or before such date in negotiating or carrying out such contract shall not be taken into account.

''(2) The amendments made by subsection (b) [amending this section] shall apply with respect to amounts received after December 31, 1966.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–834 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87–834, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–779 applicable to dividends received after Dec. 31, 1959, in taxable years ending after such date, see section 3(c) of Pub. L. 86–779, set out as a note under section 243 of this title.

SHORT TITLE OF 1971 AMENDMENT

Section 1(a) of Pub. L. 92–9 provided that: ''This Act [amending this section and sections 4911, 4912, 4914 to 4916, 4919 to 4921, 6651, 6680, and 6681 of this title and enacting provisions set out as notes under this section and sections 6680 and 6681 of this title] may be cited as the 'Interest Equalization Tax Extension Act of 1971'.''

SHORT TITLE OF 1966 AMENDMENT

Section 101 of title I of Pub. L. 89–809 provided that: ''This title [enacting sections 877, 896, 906, 981, 2107, 2108, and 6683 of this title, amending this section and sections 1, 11, 116, 154, 245, 301, 512, 542, 543, 545, 819, 821, 822, 831, 832, 841, 842, 864, 871, 872, 873, 874, 875, 881, 882, 884, 894, 895, 901, 904, 911, 931, 932, 952, 953, 1248, 1249, 1441, 1442, 1461, 2014, 2101, 2102, 2104, 2105, 2106, 2501, 2511, 3401, 6015, 6016, 6018, 6501, 6513, and 7701 of this title, redesignating former section 877 as 878, repealing section 1493, and enacting provisions set out as notes under this section and sections 11, 871, 874, 894, 901, 904, 931, 2101, 2501, and 6501 of this title] may be cited as the 'Foreign Investors Tax Act of 1966'.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

DIVIDENDS RECEIVED OR ACCRUED DURING 1987

Subsec. (a)(2)(B) of this section to be applied by substituting ''100/80ths'' for the fraction specified therein with regard to dividends received or accrued during

1987, see section 1006(b)(1)(B) of Pub. L. 100–647 set out as a note under section 245 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

Section 1012(aa)(2)–(4) of title I of Pub. L. 100–647 provided that:

''(2) CERTAIN AMENDMENTS TO APPLY NOTWITHSTANDING TREATIES.—The following amendments made by the Reform Act [Pub. L. 99–514] shall apply notwithstanding any treaty obligation of the United States in effect on the date of the enactment of the Reform Act [Oct. 22, 1986]:

''(A) The amendments made by section 1201 of the Reform Act [amending sections 864, 904, and 954 of this title].

''(B) The amendments made by title VII of the Reform Act [enacting sections 53 and 55 to 59 of this title and amending sections 5, 12, 26, 28, 29, 38, 48, 173, 174, 263, 381, 443, 703, 882, 897, 904, 936, 1016, 1363, 1366, 1561, 6154, 6425, and 6655 of this title] to the extent such amendments relate to the alternative minimum tax foreign tax credit.

''(3) CERTAIN AMENDMENTS NOT TO APPLY TO THE EXTENT INCONSISTENT WITH TREATIES.—The following amendments made by the Reform Act [Pub. L. 99–514] shall not apply to the extent the application of such amendments would be contrary to any treaty obligation of the United States in effect on the date of the enactment of the Reform Act [Oct. 22, 1986]:

''(A) The amendments made by section 1211 of the Reform Act [enacting section 865 of this title and amending this section and sections 862 to 864, 871, 881, and 904 of this title] to the extent—

''(i) such amendments apply in the case of an individual treated as a resident of a foreign country under a treaty obligation of the United States as so in effect, or

''(ii) such amendments relate to income of a nonresident from the sale or exchange of inventory property which would otherwise be sourced under section 865(e)(2) of the 1986 Code.

''(B) The amendments made by section 1212(a) of the Reform Act [amending section 863 of this title]; except for purposes of determining the amount of the foreign tax credit.

''(C) The amendments made by subsections (b) and (c) of section 1212 of the Reform Act [enacting section 887 of this title and amending sections 872 and 883 of this title].

''(D) The amendments made by section 1214 of the Reform Act [amending this section and sections 871, 881, 1441, and 6049 of this title]; except for purposes of determining the amount of the foreign tax credit.

''(E) The amendment made by section 1241(a) of the Reform Act [enacting section 884 of this title and renumbering former section 884 as 885] to the extent that, under a treaty obligation of the United States, interest described in section 884(f)(1)(A) of the 1986 Code (as added by such amendment) which is in excess of amounts deducted would be treated as other than United States source.

''(F) The amendment made by section 1241(b)(2)(A) of the Reform Act [amending this section].

''(G) The amendment made by section 1241(a) of the Reform Act [enacting section 884 of this title and renumbering former section 884 as 885] to the extent such amendment relates to section 884(f)(1)(B) of the 1986 Code.

''(H) The amendments made by section 1242 of the Reform Act [amending section 864 of this title] to the extent they relate to paragraph (7) of section 864(c) of the 1986 Code.

''(I) The amendment made by section 1247(a) of the Reform Act [amending section 892 of this title].

''(J) The amendments made by section 123 of the Reform Act [amending sections 74, 117, 1441, and 7871 of this title].

''(4) TREATMENT OF TECHNICAL CORRECTIONS.—For purposes of paragraphs (2) and (3), any amendment made by this title [see Tables for classification] shall be treated as if it had been included in the provision of the Reform Act [Pub. L. 99–514] to which such amendment relates.''

QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES; ALLOCATION AND APPORTIONMENT; DEFINITIONS; SPECIAL RULES; EFFECTIVE DATES

Section 4009 of Pub. L. 100–647 provided that:

''(a) GENERAL RULE.—For purposes of sections 861(b), 862(b), and 863(b) of the 1986 Code, qualified research and experimental expenditures shall be allocated and apportioned as follows:

''(1) Any qualified research and experimental expenditures expended solely to meet legal requirements imposed by a political entity with respect to the improvement or marketing of specific products or processes for purposes not reasonably expected to generate gross income (beyond de minimis amounts) outside the jurisdiction of the political entity shall be allocated only to gross income from sources within such jurisdiction.

''(2) In the case of any qualified research and experimental expenditures (not allocated under paragraph (1)) to the extent—

''(A) that such expenditures are attributable to activities conducted in the United States, 64 percent of such expenditures shall be allocated and apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States, and

''(B) that such expenditures are attributable to activities conducted outside the United States, 64 percent of such expenditures shall be allocated and apportioned to income from sources outside the United States and deducted from such income in determining the amount of taxable income from sources outside the United States.

''(3) The remaining portion of qualified research and experimental expenditures (not allocated under paragraphs (1) and (2)) shall be apportioned, at the annual election of the taxpayer, on the basis of gross sales or gross income, except that, if the taxpayer elects to apportion on the basis of gross income, the amount apportioned to income from sources outside the United States shall be at least 30 percent of the amount which would be so apportioned on the basis of gross sales.

''(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section, the term 'qualified research and experimental expenditures' means amounts which are research and experimental expenditures within the meaning of section 174 of the 1986 Code. For purposes of this subsection, rules similar to the rules of subsection (c) of section 174 of the 1986 Code shall apply.

''(c) SPECIAL RULES FOR EXPENDITURES ATTRIBUTABLE TO ACTIVITIES CONDUCTED IN SPACE, ETC.—

''(1) IN GENERAL.—Any qualified research and experimental expenditures described in paragraph (2)—

''(A) if incurred by a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted in the United States, and

''(B) if incurred by a person other than a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted outside the United States.

''(2) DESCRIPTION OF EXPENDITURES.—For purposes of paragraph (1), qualified research and experimental expenditures are described in this paragraph if such expenditures are attributable to activities conducted—

''(A) in space,

''(B) on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States, or

''(C) in Antarctica.

''(d) AFFILIATED GROUP.—

''(1) Except as provided in paragraph (2), the allocation and apportionment required by subsection (a) shall be determined as if all members of the affiliated group (as defined in subsection (e)(5) of section 864 of the 1986 Code) were a single corporation.

''(2) For purposes of the allocation and apportionment required by subsection (a)—

''(A) sales and gross income from products produced in whole or in part in a possession by an electing corporation (within the meaning of section 936(h)(5)(E) of the 1986 Code); and

''(B) dividends from an electing corporation,

shall not be taken into account, except that this paragraph shall not apply to sales of (and gross income and dividends attributable to sales of) products with respect to which an election under section 936(h)(5)(F) of the 1986 Code is not in effect.

''(3) The qualified research and experimental expenditures taken into account for purposes of subsection (a) shall be adjusted to reflect the amount of such expenditures included in computing the cost-sharing amount (determined under section 936(h)(5)(C)(i)(I) of the 1986 Code).

''(4) The Secretary of the Treasury or his delegate may prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations providing for the source of gross income and the allocation and apportionment of deductions to take into account the adjustments required by paragraph (3).

''(5) Paragraph (6) of section 864(e) of the 1986 Code shall not apply to qualified research and experimental expenditures.

''(e) YEARS TO WHICH SECTION APPLIES.—

''(1) IN GENERAL.—Except as provided in this subsection, this section shall apply to the taxpayer's 1st taxable year beginning after August 1, 1987.

''(2) REDUCTION IN AMOUNTS TO WHICH SECTION APPLIES.—Notwithstanding paragraph (1), this section shall only apply to that portion of the qualified research and experimental expenditures for the taxable year referred to in paragraph (1) which bears the same ratio to the total amount of such expenditures as—

''(A) the lesser of 4 months or the number of months in the taxable year, bears to

''(B) the number of months in the taxable year.''

1-YEAR MODIFICATION IN REGULATIONS PROVIDING FOR ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES

Section 1216 of Pub. L. 99–514 provided that:

''(a) GENERAL RULE.—For purposes of section 861(b), section 862(b), and section 863(b) of the Internal Revenue Code of 1954 [now 1986], notwithstanding section 864(e) of such Code—

''(1) 50 percent of all amounts allowable as a deduction for qualified research and experimental expenditures shall be apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States, and

''(2) the remaining portion of such amounts shall be apportioned on the basis of gross sales or gross income.

The preceding sentence shall not apply to any expenditures described in section 1.861–8(e)(3)(i)(B) of the Income Tax Regulations.

''(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified research and experimental expenditures' means amounts—

''(A) which are research and experimental expenditures within the meaning of section 174 of such Code, and

''(B) which are attributable to activities conducted in the United States.

''(2) TREATMENT OF DEPRECIATION, ETC.—Rules similar to the rules of section 174(c) of such Code shall apply.

''(c) EFFECTIVE DATE.—This section shall apply to taxable years beginning after August 1, 1986, and on or before August 1, 1987.''

ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES

Pub. L. 98–369, div. A, title I, § 126, July 18, 1984, 98 Stat. 648, as amended by Pub. L. 99–272, title XIII, § 13211, Apr. 7, 1986, 100 Stat. 324; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—For purposes of section 861(b), section 862(b), and section 863(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], all amounts allowable as a deduction for qualified research and experimental expenditures shall be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States.

''(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified research and experimental expenditures' means amounts—

''(A) which are research and experimental expenditures within the meaning of section 174 of such Code, and

''(B) which are attributable to activities conducted in the United States.

''(2) TREATMENT OF DEPRECIATION, ETC.—Rules similar to the rules of subsection (c) of section 174 of such Code shall apply.

''(c) EFFECTIVE DATES.—

''(1) IN GENERAL.—This section shall apply to taxable years beginning after August 13, 1983, and on or before August 1, 1986.

''(2) SPECIAL RULE.—If the taxpayer's 4th taxable year beginning after August 13, 1981, is not described in paragraph (1), this section shall apply also to such 4th taxable year.''

CONFORMITY OF AMENDMENTS MADE BY FOREIGN INVESTORS TAX ACT OF 1966 WITH TREATY OBLIGATIONS OF THE UNITED STATES

Section 110 of title I of Pub. L. 89–809 provided that: ''No amendment made by this title [see Short Title note above] shall apply in any case where its application would be contrary to any treaty obligation of the United States. For purposes of the preceding sentence, the extension of a benefit provided by any amendment made by this title shall not be deemed to be contrary to a treaty obligation of the United States.''

§ 862. Income from sources without the United States

(a) Gross income from sources without United States

The following items of gross income shall be treated as income from sources without the United States:

(1) interest other than that derived from sources within the United States as provided in section 861(a)(1);

(2) dividends other than those derived from sources within the United States as provided in section 861(a)(2);

(3) compensation for labor or personal services performed without the United States;

(4) rentals or royalties from property located without the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using without the United States patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like properties;

(5) gains, profits, and income from the sale or exchange of real property located without the United States;

(6) gains, profits, and income derived from the purchase of inventory property (within the meaning of section 865(i)(1)) within the United States and its sale or exchange without the United States;

(7) underwriting income other than that derived from sources within the United States as provided in section 861(a)(7);

(8) gains, profits, and income from the disposition of a United States real property interest (as defined in section 897(c)) when the real property is located in the Virgin Islands; and

(9) amounts received, directly or indirectly, from a foreign person for the provision of a guarantee of indebtedness of such person other than amounts which are derived from sources within the United States as provided in section 861(a)(9).

(b) Taxable income from sources without United States

From the items of gross income specified in subsection (a) there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as taxable income from sources without the United States. In the case of an individual who does not itemize deductions, an amount equal to the standard deduction shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

(Aug. 16, 1954, ch. 736, 68A Stat. 276; Pub. L. 92–178, title III, §314(b), Dec. 10, 1971, 85 Stat. 528; Pub. L. 94–455, title X, §1036(b), title XIX, §1901(b)(26)(C), Oct. 4, 1976, 90 Stat. 1633, 1798; Pub. L. 95–30, title I, §102(b)(10), May 23, 1977, 91 Stat. 138; Pub. L. 97–34, title VIII, §831(a)(2), Aug. 13, 1981, 95 Stat. 352; Pub. L. 99–514, title I, §104(b)(12), title XII, §1211(b)(1)(C), Oct. 22, 1986, 100 Stat. 2105, 2536; Pub. L. 100–647, title I, §1012(e)(4), Nov. 10, 1988, 102 Stat. 3500; Pub. L. 101–239, title VII, §7811(i)(2), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 111–240, title II, §2122(b), Sept. 27, 2010, 124 Stat. 2568.)

AMENDMENTS

2010—Subsec. (a)(9). Pub. L. 111–240 added par. (9).

1989—Subsec. (a)(6). Pub. L. 101–239 substituted ''865(i)(1)'' for ''865(h)(1)''.

1988—Subsec. (c). Pub. L. 100–647 repealed subsec. (c) which read as follows:

''(c) CROSS REFERENCE.—For source of amounts attributable to certain aircraft and vessels, see section 861(e).''

1986—Subsec. (a)(6). Pub. L. 99–514, §1211(b)(1)(C), substituted ''inventory property (within the meaning of section 865(h)(1))'' for ''personal property''.

Subsec. (b). Pub. L. 99–514, §104(b)(12), substituted ''the standard deduction'' for ''the zero bracket amount''.

1981—Subsec. (a)(8). Pub. L. 97–34 added par. (8).

1977—Subsec. (b). Pub. L. 95–30 provided that, in the case of an individual who does not itemize deductions, an amount equal to the zero bracket amount shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

1976—Subsec. (a)(5), (6). Pub. L. 94–455, §1901(b)(26)(C), inserted ''or exchange'' after ''sale''.

Subsec. (a)(7). Pub. L. 94–455, §1036(b), added par. (7).

1971—Subsec. (c). Pub. L. 92–178 added subsec. (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–240 applicable to guarantees issued after Sept. 27, 2010, see section 2122(d) of Pub. L. 111–240, set out as a note under section 861 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(12) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 1211(b)(1)(C) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to dispositions after June 18, 1980, in taxable years ending after such date, see section 831(i) of Pub. L. 97–34, set out as a note under section 897 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1036(b) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1036(c) of Pub. L. 94–455, set out as a note under section 861 of this title.

Amendment by section 1901(b)(26)(C) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable to taxable years ending after Aug. 15, 1971, but only with respect to leases entered into after such date, see section 314(c) of Pub. L. 92–178, set out as a note under section 861 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1211(b)(1)(C) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of

Pub. L. 100–647, set out as a note under section 861 of this title.

QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES; ALLOCATION AND APPORTIONMENT; DEFINITIONS; SPECIAL RULES; EFFECTIVE DATES

For allocation and apportionment of qualified research and experimental expenditures for purposes of sections 861 to 863 of this title, see section 4009 of Pub. L. 100–647, set out as a note under section 861 of this title.

1-YEAR MODIFICATION IN REGULATIONS PROVIDING FOR ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For rule governing allocation under subsec. (b) of this section of amounts allowable as a deduction for qualified research and experimental expenditures during taxable years beginning after Aug. 1, 1986, and on or before Aug. 1, 1987, see section 1216 of Pub. L. 99–514, set out as a note under section 861 of this title.

ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For purposes of subsec. (b) of this section, all amounts allowable as a deduction for qualified research and experimental expenditures are to be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States for taxable years beginning after Aug. 13, 1983, and on or before Aug. 1, 1986, see section 126 of Pub. L. 98–369, set out as a note under section 861 of this title.

§ 863. Special rules for determining source

(a) Allocation under regulations

Items of gross income, expenses, losses, and deductions, other than those specified in sections 861(a) and 862(a), shall be allocated or apportioned to sources within or without the United States, under regulations prescribed by the Secretary. Where items of gross income are separately allocated to sources within the United States, there shall be deducted (for the purpose of computing the taxable income therefrom) the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of other expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as taxable income from sources within the United States.

(b) Income partly from within and partly from without the United States

In the case of gross income derived from sources partly within and partly without the United States, the taxable income may first be computed by deducting the expenses, losses, or other deductions apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income; and the portion of such taxable income attributable to sources within the United States may be determined by processes or formulas of general apportionment prescribed by the Secretary. Gains, profits, and income—

(1) from services rendered partly within and partly without the United States,

(2) from the sale or exchange of inventory property (within the meaning of section 865(i)(1)) produced (in whole or in part) by the taxpayer within and sold or exchanged without the United States, or produced (in whole or in part) by the taxpayer without and sold or exchanged within the United States, or

(3) derived from the purchase of inventory property (within the meaning of section 865(i)(1)) within a possession of the United States and its sale or exchange within the United States,

shall be treated as derived partly from sources within and partly from sources without the United States.

(c) Source rule for certain transportation income

(1) Transportation beginning and ending in the United States

All transportation income attributable to transportation which begins and ends in the United States shall be treated as derived from sources within the United States.

(2) Other transportation having United States connection

(A) In general

50 percent of all transportation income attributable to transportation which—

(i) is not described in paragraph (1), and

(ii) begins or ends in the United States,

shall be treated as from sources in the United States.

(B) Special rule for personal service income

Subparagraph (A) shall not apply to any transportation income which is income derived from personal services performed by the taxpayer, unless such income is attributable to transportation which—

(i) begins in the United States and ends in a possession of the United States, or

(ii) begins in a possession of the United States and ends in the United States.

In the case of transportation income derived from, or in connection with, a vessel, this subparagraph shall only apply if the taxpayer is a citizen or resident alien.

(3) Transportation income

For purposes of this subsection, the term ''transportation income'' means any income derived from, or in connection with—

(A) the use (or hiring or leasing for use) of a vessel or aircraft, or

(B) the performance of services directly related to the use of a vessel or aircraft.

For purposes of the preceding sentence, the term ''vessel or aircraft'' includes any container used in connection with a vessel or aircraft.

(d) Source rules for space and certain ocean activities

(1) In general

Except as provided in regulations, any income derived from a space or ocean activity—

(A) if derived by a United States person, shall be sourced in the United States, and

(B) if derived by a person other than a United States person, shall be sourced outside the United States.

(2) Space or ocean activity

For purposes of paragraph (1)—

(A) In general

The term ''space or ocean activity'' means—

(i) any activity conducted in space, and

(ii) any activity conducted on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States.

Such term includes any activity conducted in Antarctica.

(B) Exception for certain activities

The term ''space or ocean activity'' shall not include—

(i) any activity giving rise to transportation income (as defined in section 863(c)),

(ii) any activity giving rise to international communications income (as defined in subsection (e)(2)), and

(iii) any activity with respect to mines, oil and gas wells, or other natural deposits to the extent within the United States or any foreign country or possession of the United States (as defined in section 638).

For purposes of applying section 638, the jurisdiction of any foreign country shall not include any jurisdiction not recognized by the United States.

(e) International communications income

(1) Source rules

(A) United States persons

In the case of any United States person, 50 percent of any international communications income shall be sourced in the United States and 50 percent of such income shall be sourced outside the United States.

(B) Foreign persons

(i) In general

Except as provided in regulations or clause (ii), in the case of any person other than a United States person, any international communications income shall be sourced outside the United States.

(ii) Special rule for income attributable to office or fixed place of business in the United States

In the case of any person (other than a United States person) who maintains an office or other fixed place of business in the United States, any international communications income attributable to such office or other fixed place of business shall be sourced in the United States.

(2) Definition

For purposes of this section, the term ''international communications income'' includes all income derived from the transmission of communications or data from the United States to any foreign country (or possession of the United States) or from any foreign country (or possession of the United States) to the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 277; Pub. L. 94–455, title XIX, §§1901(b)(26)(C), (D), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1798, 1799, 1834; Pub. L. 98–369, div. A, title I, §124(a), July 18, 1984, 98 Stat. 646; Pub. L. 99–514, title XII, §§1211(b)(1)(A), 1212(a), (e), 1213(a), Oct. 22, 1986, 100 Stat. 2536, 2539, 2540; Pub. L. 100–647, title I, §1012(e)(3)(A), (f), Nov. 10, 1988, 102 Stat. 3500; Pub. L. 101–239, title VII, §7811(i)(2), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 105–34, title XI, §1174(a)(2), Aug. 5, 1997, 111 Stat. 989.)

AMENDMENTS

1997—Subsec. (c)(2)(B). Pub. L. 105–34 inserted concluding provisions ''In the case of transportation income derived from, or in connection with, a vessel, this subparagraph shall only apply if the taxpayer is a citizen or resident alien.''

1989—Subsec. (b)(2), (3). Pub. L. 101–239 substituted ''865(i)(1)'' for ''865(h)(1)''.

1988—Pub. L. 100–647, §1012(e)(3)(A), substituted ''Special rules for determining source'' for ''Item not specified in section 861 or 862'' in section catchline.

Subsec. (e)(2). Pub. L. 100–647, §1012(f), substituted ''foreign country (or possession of the United States)'' for ''foreign country'' in two places.

1986—Subsec. (b)(1). Pub. L. 99–514, §1212(e), substituted ''services'' for ''transportation or other services''.

Subsec. (b)(2), (3). Pub. L. 99–514, §1211(b)(1)(A), substituted ''inventory property (within the meaning of section 865(h)(1))'' for ''personal property''.

Subsec. (c)(2). Pub. L. 99–514, §1212(a), amended par. (2) generally, in subpar. (A) substituting provisions relating to other transportation having United States connections for provisions relating to transportation between United States and any possession, and in subpar. (B) substituting provisions relating to special rule for personal service income for provisions relating to special rule for certain lessors of aircraft.

Subsecs. (d), (e). Pub. L. 99–514, §1213(a), added subsecs. (d) and (e).

1984—Subsec. (c). Pub. L. 98–369 added subsec. (c).

1976—Subsec. (a). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b). Pub. L. 94–455, §§1901(b)(26)(C), (D), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in introductory provisions, and inserted ''or exchange'' after ''sale'' in pars. (2) and (3), and ''or exchanged'' after ''sold'' in par. (2) wherever appearing.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to remuneration for services performed in taxable years beginning after Dec. 31, 1997, see section 1174(c) of Pub. L. 105–34, set out as a note under section 7701 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1211(b)(1)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Section 1212(f) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section

887 of this title and amending this section and sections 861, 872, and 883 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL RULE FOR CERTAIN LEASED PROPERTY.—The amendments made by subsections (a) and (d) [amending this section and section 861 of this title] shall not apply to any income attributable to property held by the taxpayer on January 1, 1986, if such property was first leased by the taxpayer before January 1, 1986, in a lease to which section 863(c)(2)(B) or 861(e) of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) applied.

''(3) SPECIAL RULE FOR CERTAIN SHIPS LEASED BY THE UNITED STATES NAVY.—

''(A) IN GENERAL.—In the case of any property described in subparagraph (B), paragraph (2) shall be applied by substituting '1987' for '1986' each place it appears.

''(B) PROPERTY TO WHICH PARAGRAPH APPLIES.—Property described in this subparagraph consists of 4 ships which are to be leased by the United States Navy and which are the subject of Internal Revenue Service rulings bearing the following dates and which involved the following amount of financing, respectively:

''March 5, 1986	$176,844,000
February 5, 1986	64,567,000
April 22, 1986	64,598,000
May 22, 1986	175,300,000.''

Section 1213(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 124(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to transportation beginning after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(26)(C), (D) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 1211(b)(1)(A) and 1212(a) of Pub. L. 99–514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES; ALLOCATION AND APPOINTMENT; DEFINITIONS; SPECIAL RULES; EFFECTIVE DATES

For allocation and apportionment of qualified research and experimental expenditures for purposes of sections 861 to 863 of this title, see section 4009 of Pub. L. 100–647, set out as a note under section 861 of this title.

1-YEAR MODIFICATION IN REGULATIONS PROVIDING FOR ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For rule governing allocation under subsec. (b) of this section of amounts allowable as a deduction for qualified research and experimental expenditures during taxable years beginning after Aug. 1, 1986, and on or before Aug. 1, 1987, see section 1216 of Pub. L. 99–514, set out as a note under section 861 of this title.

ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For purposes of subsec. (b) of this section, all amounts allowable as a deduction for qualified research and experimental expenditures are to be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States for taxable years beginning after Aug. 13, 1983, and on or before Aug. 1, 1986, see section 126 of Pub. L. 98–369, set out as a note under section 861 of this title.

§ 864. Definitions and special rules

(a) Produced

For purposes of this part, the term ''produced'' includes created, fabricated, manufactured, extracted, processed, cured, or aged.

(b) Trade or business within the United States

For purposes of this part, part II, and chapter 3, the term ''trade or business within the United States'' includes the performance of personal services within the United States at any time within the taxable year, but does not include—

(1) Performance of personal services for foreign employer

The performance of personal services—

(A) for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

(B) for an office or place of business maintained in a foreign country or in a possession of the United States by an individual who is a citizen or resident of the United States or by a domestic partnership or a domestic corporation,

by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year and whose compensation for such services does not exceed in the aggregate $3,000.

(2) Trading in securities or commodities

(A) Stocks and securities

(i) In general

Trading in stocks or securities through a resident broker, commission agent, custodian, or other independent agent.

(ii) Trading for taxpayer's own account

Trading in stocks or securities for the taxpayer's own account, whether by the taxpayer or his employees or through a resident broker, commission agent, custodian, or other agent, and whether or not any such employee or agent has discretionary authority to make decisions in effecting the transactions. This clause shall not apply in the case of a dealer in stocks or securities.

(B) Commodities

(i) In general

Trading in commodities through a resident broker, commission agent, custodian, or other independent agent.

(ii) Trading for taxpayer's own account

Trading in commodities for the taxpayer's own account, whether by the taxpayer or his employees or through a resident broker, commission agent, custodian, or other agent, and whether or not any such employee or agent has discretionary authority to make decisions in effecting the transactions. This clause shall not apply in the case of a dealer in commodities.

(iii) Limitation

Clauses (i) and (ii) shall apply only if the commodities are of a kind customarily dealt in on an organized commodity exchange and if the transaction is of a kind customarily consummated at such place.

(C) Limitation

Subparagraphs (A)(i) and (B)(i) shall apply only if, at no time during the taxable year, the taxpayer has an office or other fixed place of business in the United States through which or by the direction of which the transactions in stocks or securities, or in commodities, as the case may be, are effected.

(c) Effectively connected income, etc.

(1) General rule

For purposes of this title—

(A) In the case of a nonresident alien individual or a foreign corporation engaged in trade or business within the United States during the taxable year, the rules set forth in paragraphs (2), (3), (4), (6), and (7) shall apply in determining the income, gain, or loss which shall be treated as effectively connected with the conduct of a trade or business within the United States.

(B) Except as provided in paragraph (6) or (7) or in section 871(d) or sections 882(d) and (e), in the case of a nonresident alien individual or a foreign corporation not engaged in trade or business within the United States during the taxable year, no income, gain, or loss shall be treated as effectively connected with the conduct of a trade or business within the United States.

(2) Periodical, etc., income from sources within United States—factors

In determining whether income from sources within the United States of the types described in section 871(a)(1), section 871(h), section 881(a), or section 881(c), or whether gain or loss from sources within the United States from the sale or exchange of capital assets, is effectively connected with the conduct of a trade or business within the United States, the factors taken into account shall include whether—

(A) the income, gain, or loss is derived from assets used in or held for use in the conduct of such trade or business, or

(B) the activities of such trade or business were a material factor in the realization of the income, gain, or loss.

In determining whether an asset is used in or held for use in the conduct of such trade or business or whether the activities of such trade or business were a material factor in realizing an item of income, gain, or loss, due regard shall be given to whether or not such asset or such income, gain, or loss was accounted for through such trade or business.

(3) Other income from sources within United States

All income, gain, or loss from sources within the United States (other than income, gain, or loss to which paragraph (2) applies) shall be treated as effectively connected with the conduct of a trade or business within the United States.

(4) Income from sources without United States

(A) Except as provided in subparagraphs (B) and (C), no income, gain, or loss from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States.

(B) Income, gain, or loss from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States by a nonresident alien individual or a foreign corporation if such person has an office or other fixed place of business within the United States to which such income, gain, or loss is attributable and such income, gain, or loss—

(i) consists of rents or royalties for the use of or for the privilege of using intangible property described in section 862(a)(4) derived in the active conduct of such trade or business;

(ii) consists of dividends, interest, or amounts received for the provision of guarantees of indebtedness, and either is derived in the active conduct of a banking, financing, or similar business within the United States or is received by a corporation the principal business of which is trading in stocks or securities for its own account; or

(iii) is derived from the sale or exchange (outside the United States) through such office or other fixed place of business of personal property described in section 1221(a)(1), except that this clause shall not apply if the property is sold or exchanged for use, consumption, or disposition outside the United States and an office or other fixed place of business of the taxpayer in a foreign country participated materially in such sale.

Any income or gain which is equivalent to any item of income or gain described in clause (i), (ii), or (iii) shall be treated in the same manner as such item for purposes of this subparagraph.

(C) In the case of a foreign corporation taxable under part I or part II of subchapter L, any income from sources without the United States which is attributable to its United States business shall be treated as effectively connected with the conduct of a trade or business within the United States.

(D) No income from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States if it either—

(i) consists of dividends, interest, or royalties paid by a foreign corporation in which

the taxpayer owns (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958(b)), more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or

(ii) is subpart F income within the meaning of section 952(a).

(5) Rules for application of paragraph (4)(B)

For purposes of subparagraph (B) of paragraph (4)—

(A) in determining whether a nonresident alien individual or a foreign corporation has an office or other fixed place of business, an office or other fixed place of business of an agent shall be disregarded unless such agent (i) has the authority to negotiate and conclude contracts in the name of the nonresident alien individual or foreign corporation and regularly exercises that authority or has a stock of merchandise from which he regularly fills orders on behalf of such individual or foreign corporation, and (ii) is not a general commission agent, broker, or other agent of independent status acting in the ordinary course of his business,

(B) income, gain, or loss shall not be considered as attributable to an office or other fixed place of business within the United States unless such office or fixed place of business is a material factor in the production of such income, gain, or loss and such office or fixed place of business regularly carries on activities of the type from which such income, gain, or loss is derived, and

(C) the income, gain, or loss which shall be attributable to an office or other fixed place of business within the United States shall be the income, gain, or loss property allocable thereto, but, in the case of a sale or exchange described in clause (iii) of such subparagraph, the income which shall be treated as attributable to an office or other fixed place of business within the United States shall not exceed the income which would be derived from sources within the United States if the sale or exchange were made in the United States.

(6) Treatment of certain deferred payments, etc.

For purposes of this title, in the case of any income or gain of a nonresident alien individual or a foreign corporation which—

(A) is taken into account for any taxable year, but

(B) is attributable to a sale or exchange of property or the performance of services (or any other transaction) in any other taxable year,

the determination of whether such income or gain is taxable under section 871(b) or 882 (as the case may be) shall be made as if such income or gain were taken into account in such other taxable year and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the taxable year referred to in subparagraph (A).

(7) Treatment of certain property transactions

For purposes of this title, if—

(A) any property ceases to be used or held for use in connection with the conduct of a trade or business within the United States, and

(B) such property is disposed of within 10 years after such cessation,

the determination of whether any income or gain attributable to such disposition is taxable under section 871(b) or 882 (as the case may be) shall be made as if such sale or exchange occurred immediately before such cessation and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the taxable year for which such income or gain is taken into account.

(d) Treatment of related person factoring income

(1) In general

For purposes of the provisions set forth in paragraph (2), if any person acquires (directly or indirectly) a trade or service receivable from a related person, any income of such person from the trade or service receivable so acquired shall be treated as if it were interest on a loan to the obligor under the receivable.

(2) Provisions to which paragraph (1) applies

The provisions set forth in this paragraph are as follows:

(A) Section 904 (relating to limitation on foreign tax credit).

(B) Subpart F of part III of this subchapter (relating to controlled foreign corporations).

(3) Trade or service receivable

For purposes of this subsection, the term ''trade or service receivable'' means any account receivable or evidence of indebtedness arising out of—

(A) the disposition by a related person of property described in section 1221(a)(1), or

(B) the performance of services by a related person.

(4) Related person

For purposes of this subsection, the term ''related person'' means—

(A) any person who is a related person (within the meaning of section 267(b)), and

(B) any United States shareholder (as defined in section 951(b)) and any person who is a related person (within the meaning of section 267(b)) to such a shareholder.

(5) Certain provisions not to apply

(A) Certain exceptions

The following provisions shall not apply to any amount treated as interest under paragraph (1) or (6):

(i) Subparagraphs (A)(iii)(II), (B)(ii), and (C)(iii)(II) of section 904(d)(2) (relating to exceptions for export financing interest).

(ii) Subparagraph (A) of section 954(b)(3) (relating to exception where foreign base company income is less than 5 percent or $1,000,000).

(iii) Subparagraph (B) of section 954(c)(2) (relating to certain export financing).

(iv) Clause (i) of section 954(c)(3)(A) (relating to certain income received from related persons).

(B) Special rules for possessions

An amount treated as interest under paragraph (1) shall not be treated as income described in subparagraph (A) or (B) of section 936(a)(1) unless such amount is from sources within a possession of the United States (determined after the application of paragraph (1)).

(6) Special rule for certain income from loans of a controlled foreign corporation

Any income of a controlled foreign corporation (within the meaning of section 957(a)) from a loan to a person for the purpose of financing—

(A) the purchase of property described in section 1221(a)(1) of a related person, or

(B) the payment for the performance of services by a related person,

shall be treated as interest described in paragraph (1).

(7) Exception for certain related persons doing business in same foreign country

Paragraph (1) shall not apply to any trade or service receivable acquired by any person from a related person if—

(A) the person acquiring such receivable and such related person are created or organized under the laws of the same foreign country and such related person has a substantial part of its assets used in its trade or business located in such same foreign country, and

(B) such related person would not have derived any foreign base company income (as defined in section 954(a), determined without regard to section 954(b)(3)(A)), or any income effectively connected with the conduct of a trade or business within the United States, from such receivable if it had been collected by such related person.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary to prevent the avoidance of the provisions of this subsection or section 956(b)(3).[1]

(e) Rules for allocating interest, etc.

For purposes of this subchapter—

(1) Treatment of affiliated groups

The taxable income of each member of an affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single corporation.

(2) Gross income method may not be used for interest

All allocations and apportionments of interest expense shall be made on the basis of assets rather than gross income.

(3) Tax-exempt assets not taken into account

For purposes of allocating and apportioning any deductible expense, any tax-exempt asset (and any income from such an asset) shall not be taken into account. A similar rule shall apply in the case of the portion of any dividend (other than a qualifying dividend as defined in section 243(b)) equal to the deduction allowable under section 243 or 245(a) with respect to such dividend and in the case of a like portion of any stock the dividends on which would be so deductible and would not be qualifying dividends (as so defined).

(4) Basis of stock in nonaffiliated 10-percent owned corporations adjusted for earnings and profits changes

(A) In general

For purposes of allocating and apportioning expenses on the basis of assets, the adjusted basis of any stock in a nonaffiliated 10-percent owned corporation shall be—

(i) increased by the amount of the earnings and profits of such corporation attributable to such stock and accumulated during the period the taxpayer held such stock, or

(ii) reduced (but not below zero) by any deficit in earnings and profits of such corporation attributable to such stock for such period.

(B) Nonaffiliated 10-percent owned corporation

For purposes of this paragraph, the term ''nonaffiliated 10-percent owned corporation'' means any corporation if—

(i) such corporation is not included in the taxpayer's affiliated group, and

(ii) members of such affiliated group own 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote.

(C) Earnings and profits of lower tier corporations taken into account

(i) In general

If, by reason of holding stock in a nonaffiliated 10-percent owned corporation, the taxpayer is treated under clause (iii) as owning stock in another corporation with respect to which the stock ownership requirements of clause (ii) are met, the adjustment under subparagraph (A) shall include an adjustment for the amount of the earnings and profits (or deficit therein) of such other corporation which are attributable to the stock the taxpayer is so treated as owning and to the period during which the taxpayer is treated as owning such stock.

(ii) Stock ownership requirements

The stock ownership requirements of this clause are met with respect to any corporation if members of the taxpayer's affiliated group own (directly or through the application of clause (iii)) 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote.

(iii) Stock owned through entities

For purposes of this subparagraph, stock owned (directly or indirectly) by a corporation, partnership, or trust shall be treated as being owned proportionately by

[1] See References in Text note below.

its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence, shall, for purposes of applying such sentence, be treated as actually owned by such person.

(D) Coordination with subpart F, etc.

For purposes of this paragraph, proper adjustment shall be made to the earnings and profits of any corporation to take into account any earnings and profits included in gross income under section 951 or under any other provision of this title and reflected in the adjusted basis of the stock.

(5) Affiliated group

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), the term ''affiliated group'' has the meaning given such term by section 1504 (determined without regard to paragraph (4) of section 1504(b)). Notwithstanding the preceding sentence, a foreign corporation shall be treated as a member of the affiliated group if—

(i) more than 50 percent of the gross income of such foreign corporation for the taxable year is effectively connected with the conduct of a trade or business within the United States, and

(ii) at least 80 percent of either the vote or value of all outstanding stock of such foreign corporation is owned directly or indirectly by members of the affiliated group (determined with regard to this sentence).

(B) Treatment of certain financial institutions

For purposes of subparagraph (A), any corporation described in subparagraph (C) shall be treated as an includible corporation for purposes of section 1504 only for purposes of applying such section separately to corporations so described. This subparagraph shall not apply for purposes of paragraph (6).

(C) Description

A corporation is described in this subparagraph if—

(i) such corporation is a financial institution described in section 581 or 591,

(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution.

(D) Treatment of bank holding companies

To the extent provided in regulations—

(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956), and

(ii) any subsidiary of a financial institution described in section 581 or 591 or of any bank holding company if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business,

shall be treated as a corporation described in subparagraph (C).

(6) Allocation and apportionment of other expenses

Expenses other than interest which are not directly allocable or apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation.

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing—

(A) for the resourcing of income of any member of an affiliated group or modifications to the consolidated return regulations to the extent such resourcing or modification is necessary to carry out the purposes of this section,

(B) for direct allocation of interest expense incurred to carry out an integrated financial transaction to any interest (or interest-type income) derived from such transaction and in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection,

(C) for the apportionment of expenses allocated to foreign source income among the members of the affiliated group and various categories of income described in section 904(d)(1),

(D) for direct allocation of interest expense in the case of indebtedness resulting in a disallowance under section 246A,

(E) for appropriate adjustments in the application of paragraph (3) in the case of an insurance company,

(F) preventing assets or interest expense from being taken into account more than once, and

(G) that this subsection shall not apply for purposes of any provision of this subchapter to the extent the Secretary determines that the application of this subsection for such purposes would not be appropriate.

(f) Election to allocate interest, etc. on worldwide basis

For purposes of this subchapter, at the election of the worldwide affiliated group—

(1) Allocation and apportionment of interest expense

(A) In general

The taxable income of each domestic corporation which is a member of a worldwide affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single corporation.

(B) Treatment of worldwide affiliated group

The taxable income of the domestic members of a worldwide affiliated group from sources outside the United States shall be determined by allocating and apportioning the interest expense of such domestic mem-

bers to such income in an amount equal to the excess (if any) of—

(i) the total interest expense of the worldwide affiliated group multiplied by the ratio which the foreign assets of the worldwide affiliated group bears to all the assets of the worldwide affiliated group, over

(ii) the interest expense of all foreign corporations which are members of the worldwide affiliated group to the extent such interest expense of such foreign corporations would have been allocated and apportioned to foreign source income if this subsection were applied to a group consisting of all the foreign corporations in such worldwide affiliated group.

(C) Worldwide affiliated group

For purposes of this paragraph, the term ''worldwide affiliated group'' means a group consisting of—

(i) the includible members of an affiliated group (as defined in section 1504(a), determined without regard to paragraphs (2) and (4) of section 1504(b)), and

(ii) all controlled foreign corporations in which such members in the aggregate meet the ownership requirements of section 1504(a)(2) either directly or indirectly through applying paragraph (2) of section 958(a) or through applying rules similar to the rules of such paragraph to stock owned directly or indirectly by domestic partnerships, trusts, or estates.

(2) Allocation and apportionment of other expenses

Expenses other than interest which are not directly allocable or apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation. For purposes of the preceding sentence, the term ''affiliated group'' has the meaning given such term by section 1504 (determined without regard to paragraph (4) of section 1504(b)).

(3) Treatment of tax-exempt assets; basis of stock in nonaffiliated 10-percent owned corporations

The rules of paragraphs (3) and (4) of subsection (e) shall apply for purposes of this subsection, except that paragraph (4) shall be applied on a worldwide affiliated group basis.

(4) Treatment of certain financial institutions

(A) In general

For purposes of paragraph (1), any corporation described in subparagraph (B) shall be treated as an includible corporation for purposes of section 1504 only for purposes of applying this subsection separately to corporations so described.

(B) Description

A corporation is described in this subparagraph if—

(i) such corporation is a financial institution described in section 581 or 591,

(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution.

(C) Treatment of bank and financial holding companies

To the extent provided in regulations—

(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)),

(ii) a financial holding company (within the meaning of section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)), and

(iii) any subsidiary of a financial institution described in section 581 or 591, or of any such bank or financial holding company, if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business,

shall be treated as a corporation described in subparagraph (B).

(5) Election to expand financial institution group of worldwide group

(A) In general

If a worldwide affiliated group elects the application of this subsection, all financial corporations which—

(i) are members of such worldwide affiliated group, but

(ii) are not corporations described in paragraph (4)(B),

shall be treated as described in paragraph (4)(B) for purposes of applying paragraph (4)(A). This subsection (other than this paragraph) shall apply to any such group in the same manner as this subsection (other than this paragraph) applies to the pre-election worldwide affiliated group of which such group is a part.

(B) Financial corporation

For purposes of this paragraph, the term ''financial corporation'' means any corporation if at least 80 percent of its gross income is income described in section 904(d)(2)(D)(ii) and the regulations thereunder which is derived from transactions with persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the corporation. For purposes of the preceding sentence, there shall be disregarded any item of income or gain from a transaction or series of transactions a principal purpose of which is the qualification of any corporation as a financial corporation.

(C) Anti-abuse rules

In the case of a corporation which is a member of an electing financial institution group, to the extent that such corporation—

(i) distributes dividends or makes other distributions with respect to its stock after the date of the enactment of this paragraph to any member of the pre-elec-

tion worldwide affiliated group (other than to a member of the electing financial institution group) in excess of the greater of—

(I) its average annual dividend (expressed as a percentage of current earnings and profits) during the 5-taxable-year period ending with the taxable year preceding the taxable year, or

(II) 25 percent of its average annual earnings and profits for such 5-taxable-year period, or

(ii) deals with any person in any manner not clearly reflecting the income of the corporation (as determined under principles similar to the principles of section 482),

an amount of indebtedness of the electing financial institution group equal to the excess distribution or the understatement or overstatement of income, as the case may be, shall be recharacterized (for the taxable year and subsequent taxable years) for purposes of this paragraph as indebtedness of the worldwide affiliated group (excluding the electing financial institution group). If a corporation has not been in existence for 5 taxable years, this subparagraph shall be applied with respect to the period it was in existence.

(D) Election

An election under this paragraph with respect to any financial institution group may be made only by the common parent of the pre-election worldwide affiliated group and may be made only for the first taxable year beginning after December 31, 2020, in which such affiliated group includes 1 or more financial corporations. Such an election, once made, shall apply to all financial corporations which are members of the electing financial institution group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

(E) Definitions relating to groups

For purposes of this paragraph—

(i) Pre-election worldwide affiliated group

The term ''pre-election worldwide affiliated group'' means, with respect to a corporation, the worldwide affiliated group of which such corporation would (but for an election under this paragraph) be a member for purposes of applying paragraph (1).

(ii) Electing financial institution group

The term ''electing financial institution group'' means the group of corporations to which this subsection applies separately by reason of the application of paragraph (4)(A) and which includes financial corporations by reason of an election under subparagraph (A).

(F) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations—

(i) providing for the direct allocation of interest expense in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection,

(ii) preventing assets or interest expense from being taken into account more than once, and

(iii) dealing with changes in members of any group (through acquisitions or otherwise) treated under this paragraph as an affiliated group for purposes of this subsection.

(6) Election

An election to have this subsection apply with respect to any worldwide affiliated group may be made only by the common parent of the domestic affiliated group referred to in paragraph (1)(C) and may be made only for the first taxable year beginning after December 31, 2020, in which a worldwide affiliated group exists which includes such affiliated group and at least 1 foreign corporation. Such an election, once made, shall apply to such common parent and all other corporations which are members of such worldwide affiliated group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

(g) Allocation of research and experimental expenditures

(1) In general

For purposes of sections 861(b), 862(b), and 863(b), qualified research and experimental expenditures shall be allocated and apportioned as follows:

(A) Any qualified research and experimental expenditures expended solely to meet legal requirements imposed by a political entity with respect to the improvement or marketing of specific products or processes for purposes not reasonably expected to generate gross income (beyond de minimis amounts) outside the jurisdiction of the political entity shall be allocated only to gross income from sources within such jurisdiction.

(B) In the case of any qualified research and experimental expenditures (not allocated under subparagraph (A)) to the extent—

(i) that such expenditures are attributable to activities conducted in the United States, 50 percent of such expenditures shall be allocated and apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States, and

(ii) that such expenditures are attributable to activities conducted outside the United States, 50 percent of such expenditures shall be allocated and apportioned to income from sources outside the United States and deducted from such income in determining the amount of taxable income from sources outside the United States.

(C) The remaining portion of qualified research and experimental expenditures (not allocated under subparagraphs (A) and (B)) shall be apportioned, at the annual election of the taxpayer, on the basis of gross sales or

gross income, except that, if the taxpayer elects to apportion on the basis of gross income, the amount apportioned to income from sources outside the United States shall at least be 30 percent of the amount which would be so apportioned on the basis of gross sales.

(2) Qualified research and experimental expenditures

For purposes of this section, the term ''qualified research and experimental expenditures'' means amounts which are research and experimental expenditures within the meaning of section 174. For purposes of this paragraph, rules similar to the rules of subsection (c) of section 174 shall apply. Any qualified research and experimental expenditures treated as deferred expenses under subsection (b) of section 174 shall be taken into account under this subsection for the taxable year for which such expenditures are allowed as a deduction under such subsection.

(3) Special rules for expenditures attributable to activities conducted in space, etc.

(A) In general

Any qualified research and experimental expenditures described in subparagraph (B)—

(i) if incurred by a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted in the United States, and

(ii) if incurred by a person other than a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted outside the United States.

(B) Description of expenditures

For purposes of subparagraph (A), qualified research and experimental expenditures are described in this subparagraph if such expenditures are attributable to activities conducted—

(i) in space,

(ii) on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States, or

(iii) in Antarctica.

(4) Affiliated group

(A) Except as provided in subparagraph (B), the allocation and apportionment required by paragraph (1) shall be determined as if all members of the affiliated group (as defined in subsection (e)(5)) were a single corporation.

(B) For purposes of the allocation and apportionment required by paragraph (1)—

(i) sales and gross income from products produced in whole or in part in a possession by an electing corporation (within the meaning of section 936(h)(5)(E)), and

(ii) dividends from an electing corporation,

shall not be taken into account, except that this subparagraph shall not apply to sales of (and gross income and dividends attributable to sales of) products with respect to which an election under section 936(h)(5)(F) is not in effect.

(C) The qualified research and experimental expenditures taken into account for purposes of paragraph (1) shall be adjusted to reflect the amount of such expenditures included in computing the cost-sharing amount (determined under section 936(h)(5)(C)(i)(I)).

(D) The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations providing for the source of gross income and the allocation and apportionment of deductions to take into account the adjustments required by subparagraph (B) or (C).

(E) Paragraph (6) of subsection (e) shall not apply to qualified research and experimental expenditures.

(5) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including regulations relating to the determination of whether any expenses are attributable to activities conducted in the United States or outside the United States and regulations providing such adjustments to the provisions of this subsection as may be appropriate in the case of cost-sharing arrangements and contract research.

(6) Applicability

This subsection shall apply to the taxpayer's first taxable year (beginning on or before August 1, 1994) following the taxpayer's last taxable year to which Revenue Procedure 92–56 applies or would apply if the taxpayer elected the benefits of such Revenue Procedure.

(Aug. 16, 1954, ch. 736, 68A Stat. 278; Pub. L. 89–809, title I, §102(d), Nov. 13, 1966, 80 Stat. 1544; Pub. L. 94–455, title XIX, §1901(a)(113), Oct. 4, 1976, 90 Stat. 1783; Pub. L. 98–369, div. A, title I, §§123(a), 127(c), July 18, 1984, 98 Stat. 644, 651; Pub. L. 99–514, title XII, §§1201(d)(4), 1211(b)(2), 1215(a), (b)(1), 1221(a)(2), 1223(b)(1), 1242(a), (b), 1275(c)(7), title XVIII, §§1810(c)(2), (3), 1899A(21), Oct. 22, 1986, 100 Stat. 2525, 2536, 2544, 2545, 2550, 2558, 2580, 2599, 2824, 2959; Pub. L. 100–203, title X, §10242(b), Dec. 22, 1987, 101 Stat. 1330–423; Pub. L. 100–647, title I, §1012(a)(1)(B), (d)(7), (10), (g)(5), (h)(1), (2)(A), (3)–(6), (p)(30), (r), Nov. 10, 1988, 102 Stat. 3494, 3498, 3499, 3501–3503, 3521, 3525; Pub. L. 101–239, title VII, §7111, Dec. 19, 1989, 103 Stat. 2326; Pub. L. 101–508, title XI, §11401(a), Nov. 5, 1990, 104 Stat. 1388–472; Pub. L. 102–227, title I, §101(a), Dec. 11, 1991, 105 Stat. 1686; Pub. L. 103–66, title XIII, §13234, Aug. 10, 1993, 107 Stat. 504; Pub. L. 105–34, title XI, §1162(a), Aug. 5, 1997, 111 Stat. 987; Pub. L. 106–170, title V, §532(c)(2)(N)–(P), Dec. 17, 1999, 113 Stat. 1931; Pub. L. 106–519, §4(3), Nov. 15, 2000, 114 Stat. 2432; Pub. L. 108–357, title I, §101(b)(6), title IV, §§401(a), (b), 403(b)(6), 413(c)(12), title VIII, §894(a), Oct. 22, 2004, 118 Stat. 1423, 1488, 1491, 1494, 1507, 1647; Pub. L. 110–289, div. C, title III, §3093(a), (b), July 30, 2008, 122 Stat. 2912; Pub. L. 111–92, §15(a), (b), Nov. 6, 2009, 123 Stat. 2996; Pub. L. 111–147, title V, §551(a), Mar. 18, 2010, 124 Stat. 117; Pub. L. 111–226, title II, §216(a), Aug. 10, 2010, 124 Stat. 2400; Pub. L. 111–240, title II, §2122(c), Sept. 27, 2010, 124 Stat. 2568.)

REFERENCES IN TEXT

Section 956(b)(3), referred to in subsec. (d)(8), was redesignated section 956(c)(3) by Pub. L. 103–66, title XIII, § 13232(a)(1), Aug. 10, 1993, 107 Stat. 501.

Section 2(a) of the Bank Holding Company Act of 1956, referred to in subsec. (e)(5)(D)(i), is classified to section 1841(a) of Title 12, Banks and Banking.

The date of the enactment of this paragraph, referred to in subsec. (f)(5)(C)(i), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2010—Subsec. (c)(4)(B)(ii). Pub. L. 111–240 substituted ''dividends, interest, or amounts received for the provision of guarantees of indebtedness'' for ''dividends or interest''.

Subsec. (e)(5)(A). Pub. L. 111–226 inserted at end ''Notwithstanding the preceding sentence, a foreign corporation shall be treated as a member of the affiliated group if—'' and added cls. (i) and (ii).

Subsec. (f)(5)(D), (6). Pub. L. 111–147 substituted ''December 31, 2020'' for ''December 31, 2017''.

2009—Subsec. (f)(5)(D), (6). Pub. L. 111–92, § 15(a), substituted ''December 31, 2017'' for ''December 31, 2010''.

Subsec. (f)(7). Pub. L. 111–92, § 15(b), struck out par. (7). Text read as follows: ''In the case of the first taxable year to which this subsection applies, the increase (if any) in the amount of the interest expense allocable to sources within the United States by reason of the application of this subsection shall be 30 percent of the amount of such increase determined without regard to this paragraph.''

2008—Subsec. (f)(5)(D), (6). Pub. L. 110–289, § 3093(a), substituted ''December 31, 2010'' for ''December 31, 2008''.

Subsec. (f)(7). Pub. L. 110–289, § 3093(b), added par. (7).

2004—Subsec. (c)(4)(B). Pub. L. 108–357, § 894(a), added concluding provisions.

Subsec. (d)(2). Pub. L. 108–357, § 413(c)(12), redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: ''Part III of subchapter G of this chapter (relating to foreign personal holding companies).''

Subsec. (d)(5)(A)(i). Pub. L. 108–357, § 403(b)(6), substituted ''(C)(iii)(II)'' for ''(C)(iii)(III)''.

Subsec. (e)(3). Pub. L. 108–357, § 101(b)(6), struck out ''(A) In general'' before ''For purposes'' and struck out heading and text of subpar. (B). Text read as follows: ''For purposes of allocating and apportioning any interest expense, there shall not be taken into account any qualifying foreign trade property (as defined in section 943(a)) which is held by the taxpayer for lease or rental in the ordinary course of trade or business for use by the lessee outside the United States (as defined in section 943(b)(2)).''

Subsec. (e)(7)(B). Pub. L. 108–357, § 401(b)(1), inserted ''and in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection'' before comma at end.

Subsec. (e)(7)(F), (G). Pub. L. 108–357, § 401(b)(2), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsecs. (f), (g). Pub. L. 108–357, § 401(a), added subsec. (f) and redesignated former subsec. (f) as (g).

2000—Subsec. (e)(3). Pub. L. 106–519 designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

1999—Subsecs. (c)(4)(B)(iii), (d)(3)(A), (6)(A). Pub. L. 106–170 substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

1997—Subsec. (b)(2)(A)(ii). Pub. L. 105–34 struck out '', or in the case of a corporation (other than a corporation which is, or but for section 542(c)(7), 542(c)(10), or 543(b)(1)(C) would be, a personal holding company) the principal business of which is trading in stocks or securities for its own account, if its principal office is in the United States'' after ''dealer in stocks or securities''.

1993—Subsec. (f)(1)(B). Pub. L. 103–66, § 13234(a), substituted ''50 percent'' for ''64 percent'' in cls. (i) and (ii).

Subsec. (f)(4)(D). Pub. L. 103–66, § 13234(b)(2), substituted ''subparagraph (B) or (C)'' for ''subparagraph (C)''.

Subsec. (f)(5), (6). Pub. L. 103–66, § 13234(b)(1), added pars. (5) and (6) and struck out heading and text of former par. (5). Text read as follows:

''(A) IN GENERAL.—This subsection shall apply to the taxpayer's first 3 taxable years beginning after August 1, 1989, and on or before August 1, 1992.

''(B) REDUCTION.—Notwithstanding subparagraph (A), in the case of the taxpayer's first taxable year beginning after August 1, 1991, this subsection shall only apply to qualified research and experimental expenditures incurred during the first 6 months of such taxable year.''

1991—Subsec. (f)(5). Pub. L. 102–227 amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''This subsection shall apply to the taxpayer's first 2 taxable years beginning after August 1, 1989, and on or before August 1, 1991.''

1990—Subsec. (f)(5). Pub. L. 101–508 substituted ''Years'' for ''Year'' in heading and amended text generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—Except as provided in this paragraph, this subsection shall apply to the taxpayer's first taxable year beginning after August 1, 1989, and before August 2, 1990.

''(B) REDUCTION.—Notwithstanding subparagraph (A), this subsection shall only apply to that portion of the qualified research and experimental expenditures for the taxable year referred to in subparagraph (A) which bears the same ratio to the total amount of such expenditures as—

''(i) the lesser of 9 months or the number of months in the taxable year, bears to

''(ii) the number of months in the taxable year.''

1989—Subsec. (f). Pub. L. 101–239 added subsec. (f).

1988—Subsec. (b)(2)(A)(ii). Pub. L. 100–647, § 1012(p)(30), substituted ''section 542(c)(7), 542(c)(10),'' for ''section 542(c)(7)''.

Subsec. (c)(2). Pub. L. 100–647, § 1012(g)(5), struck out at end ''In applying this paragraph and paragraph (4), interest referred to in section 861(a)(1)(A) shall be considered income from sources within the United States.''

Subsec. (c)(4)(B)(i), (ii). Pub. L. 100–647, § 1012(d)(10), struck out ''(including any gain or loss realized on the sale or exchange of such property)'' after ''section 862(a)(4)'' in cl. (i) and '', or gain or loss from the sale or exchange of stock or notes, bonds, or other evidences of indebtedness'' after ''dividends or interest'' in cl. (ii).

Subsec. (c)(4)(B)(iii). Pub. L. 100–647, § 1012(d)(7), added cl. (iii).

Subsec. (c)(6). Pub. L. 100–647, § 1012(r)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''For purposes of this title, any income or gain of a nonresident alien individual or a foreign corporation for any taxable year which is attributable to a sale or exchange of property or the performance of services (or any other transaction) in any other taxable year shall be treated as effectively connected with the conduct of a trade or business within the United States if it would have been so treated if such income or gain were taken into account in such other taxable year.''

Subsec. (c)(7). Pub. L. 100–647, § 1012(r)(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''For purposes of this title, if any property ceases to be used or held for use in connection with the conduct of a trade or business within the United States, the determination of whether any income or gain attributable to a sale or exchange of such property occurring within 10 years after such cessation is effectively connected with the conduct of a trade or business within the United States shall be made as if such sale or exchange occurred immediately before such cessation.''

Subsec. (d)(5)(A)(i). Pub. L. 100–647, § 1012(a)(1)(B), substituted ''(C)(iii)(III)'' for ''(C)(iii)''.

Subsec. (e). Pub. L. 100–647, § 1012(h)(6)(B), struck out ''(except as provided in regulations)'' after ''subchapter''.

Subsec. (e)(1). Pub. L. 100–647, § 1012(h)(2)(A), struck out ''from sources outside the United States'' after ''affiliated group''.

Subsec. (e)(3). Pub. L. 100–647, §1012(h)(3), inserted sentence at end and struck out former last sentence which read as follows: ''A similar rule shall apply in the case of any dividend (other than a qualifying dividend as defined in section 243(b)) for which a deduction is allowable under section 243 or 245(a) and any stock the dividends on which would be so deductible and would not be qualifying dividends (as so defined).''

Subsec. (e)(4). Pub. L. 100–647, §1012(h)(1), substituted ''nonaffiliated 10-percent owned corporations'' for ''certain corporations'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of allocating and apportioning expenses on the basis of assets, the adjusted basis of any asset which is stock in a corporation which is not included in the affiliated group and in which members of the affiliated group own 10 percent or more of the total combined voting power of all classes of stock entitled to vote in such corporation shall be—

''(A) increased by the amount of the earnings and profits of such corporation attributable to such stock and accumulated during the period the taxpayer held such stock, or

''(B) reduced (but not below zero) by any deficit in earnings and profits of such corporation attributable to such stock for such period.''

Subsec. (e)(5)(B). Pub. L. 100–647, §1012(h)(4)(B), inserted at end ''This subparagraph shall not apply for purposes of paragraph (6).''

Subsec. (e)(5)(D). Pub. L. 100–647, §1012(h)(4)(A), added subpar. (D).

Subsec. (e)(6). Pub. L. 100–647, §1012(h)(5), substituted ''directly allocable or apportioned'' for ''directly allocable and apportioned''.

Subsec. (e)(7)(D) to (F). Pub. L. 100–647, §1012(h)(6)(A), added subpars. (D) to (F).

1987—Subsec. (c)(4)(C). Pub. L. 100–203 inserted ''or part II'' after ''part I''.

1986—Pub. L. 99–514, §1215(b)(1), inserted ''and special rules'' in section catchline.

Subsec. (c)(1)(A). Pub. L. 99–514, §1242(b)(1), inserted reference to pars. (6) and (7).

Subsec. (c)(1)(B). Pub. L. 99–514, §1242(b)(2), inserted ''paragraph (6) or (7) or in''.

Subsec. (c)(2). Pub. L. 99–514, §1899A(21), inserted a comma between ''section 871(h)'' and ''section 881(a)''.

Subsec. (c)(4)(B)(iii). Pub. L. 99–514, §1211(b)(2), struck out cl. (iii), which read as follows: ''is derived from the sale or exchange (without the United States) through such office or other fixed place of business of personal property described in section 1221(1), except that this clause shall not apply if the property is sold or exchanged for use, consumption, or disposition outside the United States and an office or other fixed place of business of the taxpayer outside the United States participated materially in such sale or exchange.''

Subsec. (c)(6), (7). Pub. L. 99–514, §1242(a), added pars. (6) and (7).

Subsec. (d)(5)(A)(i). Pub. L. 99–514, §1201(d)(4), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''Subparagraphs (A), (B), (C), and (D) of section 904(d)(2) (relating to interest income to which separate limitation applies) and subparagraph (J) of section 904(d)(3) (relating to interest from members of same affiliated group).''

Pub. L. 99–514, §1810(c)(3), inserted ''and subparagraph (J) of section 904(d)(3) (relating to interest from members of same affiliated group)''.

Subsec. (d)(5)(A)(ii). Pub. L. 99–514, §1223(b)(1), substituted ''less than 5 percent or $1,000,000'' for ''less than 10 percent''.

Subsec. (d)(5)(A)(iii). Pub. L. 99–514, §1221(a)(2), amended cl. (iii) generally, substituting ''section 954(c)(2) (relating to certain export financing)'' for ''section 954(c)(3) (relating to certain income derived in active conduct of trade or business)''.

Subsec. (d)(5)(A)(iv). Pub. L. 99–514, §1221(a)(2), amended cl. (iv) generally, substituting ''Clause (i) of section 954(c)(3)(A) (relating to'' for ''Subparagraphs (A) and (B) of section 954(c)(4) (relating to exception for''.

Subsec. (d)(5)(B). Pub. L. 99–514, §1275(c)(7), amended subpar. (B) generally, striking out cl. (i) heading, substituting ''An amount'' for ''Any amount'', and striking out cl. (ii), Virgin Islands corporations, which read as follows: ''Subsection (b) of section 934 shall not apply to any amount treated as interest under paragraph (1) unless such amount is from sources within the Virgin Islands (determined after the application of paragraph (1)).''

Subsec. (d)(7), (8). Pub. L. 99–514, §1810(c)(2), added par. (7) and redesignated former par. (7) as (8).

Subsec. (e). Pub. L. 99–514, §1215(a), added subsec. (e).

1984—Subsec. (c)(2). Pub. L. 98–369, §127(c), substituted ''section 871(a)(1), section 871(h) section 881(a), or section 881(c)'' for ''section 871(a)(1) or section 881(a)''.

Subsec. (d). Pub. L. 98–369, §123(a), added subsec. (d).

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(113)(A), substituted in heading ''Produced'' for ''Sale, etc.'' and struck out in text provisions relating to the definition of sale and sold.

Subsec. (c)(4)(B)(i). Pub. L. 94–455, §1901(a)(113)(B), substituted ''sale or exchange'' for ''sale''.

Subsec. (c)(4)(B)(iii). Pub. L. 94–455, §1901(a)(113)(B), (C), substituted ''sold or exchanged'' for ''sold'' and ''sale or exchange'' for ''sale'' wherever appearing.

Subsec. (c)(5)(C). Pub. L. 94–455, §1901(a)(113)(B), substituted ''sale or exchange'' for ''sale'' wherever appearing.

1966—Pub. L. 89–809 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–240 applicable to guarantees issued after Sept. 27, 2010, see section 2122(d) of Pub. L. 111–240, set out as a note under section 861 of this title.

Pub. L. 111–226, title II, §216(b), Aug. 10, 2010, 124 Stat. 2400, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 10, 2010].''

Pub. L. 111–147, title V, §551(b), Mar. 18, 2010, 124 Stat. 117, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Mar. 18, 2010].''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–92, §15(c), Nov. 6, 2009, 123 Stat. 2996, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2010.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title III, §3093(c), July 30, 2008, 122 Stat. 2912, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(b)(6) of Pub. L. 108–357 applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

Pub. L. 108–357, title IV, §401(c), Oct. 22, 2004, 118 Stat. 1491, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

Pub. L. 108–357, title IV, §403(c), Oct. 22, 2004, 118 Stat. 1494, provided that: ''The amendments made by this section [amending this section and section 904 of this title] shall apply to taxable years beginning after December 31, 2002.''

Pub. L. 108–357, title IV, §403(d), as added by Pub. L. 109–135, title IV, §403(*l*), Dec. 21, 2005, 119 Stat. 2625, provided that: ''If the taxpayer elects (at such time and in such form and manner as the Secretary of the Treasury may prescribe) to have the rules of this subsection apply—

''(1) the amendments made by this section [amending this section and section 904 of this title] shall not apply to taxable years beginning after December 31, 2002, and before January 1, 2005, and

''(2) in the case of taxable years beginning after December 31, 2004, clause (iv) of section 904(d)(4)(C) of the Internal Revenue Code of 1986 (as amended by this section) shall be applied by substituting 'January 1, 2005' for 'January 1, 2003' both places it appears.''

[Amendment by Pub. L. 109–135 adding section 403(d) of Pub. L. 108–357, set out above, effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as an Effective Date of 2005 Amendment note under section 26 of this title.]

Amendment by section 413(c)(12) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–357, title VIII, § 894(b), Oct. 22, 2004, 118 Stat. 1647, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–519 applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1162(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 101(b) of Pub. L. 102–227 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after August 1, 1989.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11401(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after August 1, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10242(d) of Pub. L. 100–203, set out as a note under section 816 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1201(d)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1201(e) of Pub. L. 99–514, set out as a note under section 904 of this title.

Amendment by section 1211(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Section 1215(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1012(h)(7), Nov. 10, 1988, 102 Stat. 3504; Pub. L. 104–191, title V, § 521(a), Aug. 21, 1996, 110 Stat. 2103, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) TRANSITIONAL RULES.—

''(A) GENERAL PHASE-IN.—

''(i) IN GENERAL.—In the case of the 1st 3 taxable years of the taxpayer beginning after December 31, 1986, the amendments made by this section shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the general phase-in amount.

''(ii) GENERAL PHASE-IN AMOUNT.—Except as provided in clause (iii), the general phase-in amount for purposes of clause (i) is the applicable percentage (determined under the following table) of the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985:

"In the case of the:	The applicable percentage is:
1st taxable year	75
2nd taxable year	50
3rd taxable year	25.

''(iii) LOWER LIMIT WHERE TAXPAYER REDUCES INDEBTEDNESS.—For purposes of applying this subparagraph to interest expenses attributable to any month, the general phase-in amount shall in no event exceed the lowest amount of indebtedness of the taxpayer outstanding as of the close of any preceding month beginning after November 16, 1985. To the extent provided in regulations, the average amount of indebtedness outstanding during any month shall be used (in lieu of the amount outstanding as of the close of such month) for purposes of the preceding sentence.

''(B) CONSOLIDATION RULE NOT TO APPLY TO CERTAIN INTEREST.—

''(i) IN GENERAL.—In the case of the 1st 5 taxable years of the taxpayer beginning after December 31, 1986—

''(I) subparagraph (A) shall not apply for purposes of paragraph (1) of section 864(e) of the Internal Revenue Code of 1986 (as added by this section), but

''(II) such paragraph (1) shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the special phase-in amount.

''(ii) SPECIAL PHASE-IN AMOUNT.—The special phase-in amount for purposes of clause (i) is the sum of—

''(I) the general phase-in amount as determined for purposes of subparagraph (A),

''(II) the 5-year phase-in amount, and

''(III) the 4-year phase-in amount.

For purposes of applying this subparagraph to interest expense attributable to any month, the special phase-in amount shall in no event exceed the limitation determined under subparagraph (A)(iii).

''(iii) 5-YEAR PHASE-IN AMOUNT.—The 5-year phase-in amount is the lesser of—

''(I) the applicable percentage (determined under the following table for purposes of this subclause) of the 5-year debt amount, or

''(II) the applicable percentage (determined under the following table for purposes of this subclause) of the 5-year debt amount reduced by paydowns:

"In the case of the:	The applicable percentage for purposes of subclause (I) is:	The applicable percentage for purposes of subclause (II) is:
1st taxable year	8⅓	10
2nd taxable year	16⅔	25
3rd taxable year	25	50
4th taxable year	33⅓	100
5th taxable year	16⅔	100.

''(iv) 4-YEAR PHASE-IN AMOUNT.—The 4-year phase-in amount is the lesser of—

''(I) the applicable percentage (determined under the following table for purposes of this subclause) of the 4-year debt amount, or

''(II) the applicable percentage (determined under the following table for purposes of this subclause) of the 4-year debt amount reduced by paydowns to the extent such paydowns exceed the 5-year debt amount:

"In the case of the:	The applicable percentage for purposes of subclause (I) is:	The applicable percentage for purposes of subclause (II) is:
1st taxable year	5	6¼
2nd taxable year	10	16⅔
3rd taxable year	15	37½
4th taxable year	20	100
5th taxable year	0	0.

''(v) 5-YEAR DEBT AMOUNT.—The term '5-year debt amount' means the excess (if any) of—

''(I) the amount of the outstanding indebtedness of the taxpayer on May 29, 1985, over

''(II) the amount of the outstanding indebtedness of the taxpayer as of the close of December 31, 1983.

The 5-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985.

''(vi) 4-YEAR DEBT AMOUNT.—The term '4-year debt amount' means the excess (if any) of—

''(I) the amount referred to in clause (v)(II), over

''(II) the amount of the outstanding indebtedness of the taxpayer as of the close of December 31, 1982.

The 4-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, reduced by the 5-year debt amount.

''(vii) PAYDOWNS.—For purposes of applying this subparagraph to interest expenses attributable to any month, the term 'paydowns' means the excess (if any) of—

''(I) the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, over

''(II) the lowest amount of indebtedness of the taxpayer outstanding as of the close of any preceding month beginning after November 16, 1985 (or, to the extent provided in regulations under subparagraph (A)(iii), the average amount of indebtedness outstanding during any such month).

''(C) COORDINATION OF SUBPARAGRAPHS (A) AND (B).—In applying subparagraph (B), there shall first be taken into account indebtedness to which subparagraph (A) applies.

''(D) SPECIAL RULES.—

''(i) In the case of the 1st 9 taxable years of the taxpayer beginning after December 31, 1986, the amendments made by this section shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the applicable percentage (determined under the following table) of the indebtedness described in clause (iii) or (iv):

"In the case of the:	The applicable percentage is:
1st taxable year	90
2nd taxable year	80
3rd taxable year	70
4th taxable year	60
5th taxable year	50
6th taxable year	40
7th taxable year	30
8th taxable year	20
9th taxable year	10.

''(ii) The provisions of this subparagraph shall apply in lieu of the provisions of subparagraphs (A) and (B).

''(iii) INDEBTEDNESS OUTSTANDING ON MAY 29, 1985.—Indebtedness is described in this clause if it is indebtedness (which was outstanding on May 29, 1985) of a corporation incorporated on June 13, 1917, which has its principal place of business in Bartlesville, Oklahoma.

''(iv) INDEBTEDNESS OUTSTANDING ON MAY 29, 1985.—Indebtedness is described in this clause if it is indebtedness (which was outstanding on May 29, 1985) of a member of an affiliated group (as defined in section 1504(a) [of the Internal Revenue Code of 1986]), the common parent of which was incorporated on August 26, 1926, and has its principal place of business in Harrison, New York.

''(E) TREATMENT OF AFFILIATED GROUP.—For purposes of this paragraph, all members of the same affiliated group of corporations (as defined in section 864(e)(5)(A) of the Internal Revenue Code of 1986, as added by this section) shall be treated as 1 taxpayer whether or not such members filed a consolidated return.

''(F) ELECTION TO HAVE PARAGRAPH NOT APPLY.—A taxpayer may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have this paragraph not apply. In the case of members of the same affiliated group (as so defined), such an election may be made only if each member consents to such election.

''(3) SPECIAL RULE.—

''(A) IN GENERAL.—In the case of a qualified corporation, in lieu of applying paragraph (2), the amendments made by this section shall not apply to interest expenses allocable to any indebtedness to the extent such indebtedness does not exceed $500,000,000 if—

''(i) the indebtedness was incurred to develop or improve existing property that is owned by the taxpayer on November 16, 1985, and was acquired with the intent to develop or improve the property,

''(ii) the loan agreement with respect to the indebtedness provides that the funds are to be utilized for purposes of developing or improving the above property, and

''(iii) the debt to equity ratio of the companies that join in the filing of the consolidated return is less than 15 percent.

''(B) QUALIFIED CORPORATION.—For purposes of subparagraph (A), the term 'qualified corporation' means a corporation—

''(i) which was incorporated in Delaware on June 29, 1964,

''(ii) the principal subsidiary of which is a resident of Arkansas, and

''(iii) which is a member of an affiliated group the average daily United States production of oil of which is less than 50,000 barrels and the average daily United States refining of which is less than 150,000 barrels.

''(4) SPECIAL RULES FOR SUBSIDIARY.—The amendments made by this section shall not apply to interest on up to the applicable dollar amount of indebtedness

of a subsidiary incorporated on February 11, 1975, the indebtedness of which on May 6, 1986, included—

''(A) $100,000,000 face amount of 11¾ percent notes due in 1990,

''(B) $100,000,000 of 8¾ percent notes due in 1989,

''(C) 6¾ percent Japanese yen notes due in 1991, and

''(D) 5⅜ percent Swiss franc bonds due in 1994.

For purposes of this paragraph, the term 'applicable dollar amount' means $600,000,000 in the case of taxable years beginning in 1987 through 1991, $500,000,000 in the case of the taxable year beginning in 1992, $400,000,000 in the case of the taxable year beginning in 1993, $300,000,000 in the case of the taxable year beginning in 1994, $200,000,000 in the case of the taxable year beginning in 1995, $100,000,000 in the case of the taxable year beginning in 1996, and zero in the case of taxable years beginning after 1996.

''[(5) Repealed. Pub. L. 104–191, title V, § 521(a), Aug. 21, 1996, 110 Stat. 2103.]

''(6) SPECIAL RULES FOR ALLOCATING GENERAL AND ADMINISTRATIVE EXPENSES.—

''(A) IN GENERAL.—In the case of an affiliated group of domestic corporations the common parent of which has its principal office in New Brunswick, New Jersey, and has a certificate of organization which was filed with the Secretary of the State of New Jersey on November 10, 1887, the amendments made by this section shall not apply to the phase-in percentage of general and administrative expenses paid or incurred in its 1st 3 taxable years beginning after December 31, 1986.

''(B) PHASE-IN PERCENTAGE.—For purposes of subparagraph (A):

"In the case of taxable years beginning in:	The phase-in percentage is:
1987	75
1988	50
1989	25.''

[Section 521(b) of Pub. L. 104–191 provided that:

[''(1) IN GENERAL.—The amendment made by this section [amending section 1215(c) of Pub. L. 99–514, set out above] shall apply to taxable years beginning after December 31, 1995.

[''(2) SPECIAL RULE.—In the case of the first taxable year beginning after December 31, 1995, the pre-effective date portion of the interest expense of the corporation referred to in such paragraph (5) of such section 1215(c) [of Pub. L. 99–514] for such taxable year shall be allocated and apportioned without regard to such amendment. For purposes of the preceding sentence, the pre-effective date portion is the amount which bears the same ratio to the interest expense for such taxable year as the number of days during such taxable year before the date of the enactment of this Act [Aug. 21, 1996] bears to 366.''']

Amendment by section 1221(a)(2) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99–514, set out as a note under section 954 of this title.

Section 1223(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 881 and 954 of this title] shall apply to taxable years beginning after December 31, 1986.''

Section 1242(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1275(c)(7) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1810(c)(2), (3) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 123(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 956 of this title] shall apply to accounts receivable and evidences of indebtedness transferred after March 1, 1984, in taxable years ending after such date.

''(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to accounts receivable and evidences of indebtedness acquired after March 1, 1984, and before March 1, 1994, by a Belgian corporation in existence on March 1, 1984, in any taxable year ending after such date, but only to the extent that the amount includible in gross income by reason of section 956 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to such corporation for all such taxable years is not reduced by reason of this paragraph by more than the lesser of—

''(A) $15,000,000 or

''(B) the amount of the Belgian corporation's adjusted basis on March 1, 1984, in stock of a foreign corporation formed to issue bonds outside the United States to the public.''

Amendment by section 127(c) of Pub. L. 98–369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years ending after such date, see section 127(g)(1) of Pub. L. 98–369, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, except that in applying section 864(c)(4)(B)(iii) of this title with respect to a binding contract entered into on or before Feb. 24, 1966, activities in the United States on or before such date in negotiating or carrying out such contract shall not be taken into account, see section 102(e)(1) of Pub. L. 89–809, set out as a note under section 861 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 1201(d)(4) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, and for nonapplication of amendments by sections 1211(b)(2) and 1242(a) of Pub. L. 99–514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2) to (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 865. Source rules for personal property sales

(a) General rule

Except as otherwise provided in this section, income from the sale of personal property—

(1) by a United States resident shall be sourced in the United States, or

(2) by a nonresident shall be sourced outside the United States.

(b) Exception for inventory property

In the case of income derived from the sale of inventory property—

(1) this section shall not apply, and

(2) such income shall be sourced under the rules of sections 861(a)(6), 862(a)(6), and 863.

Notwithstanding the preceding sentence, any income from the sale of any unprocessed timber which is a softwood and was cut from an area in the United States shall be sourced in the United States and the rules of sections 862(a)(6) and 863(b) shall not apply to any such income. For purposes of the preceding sentence, the term ''unprocessed timber'' means any log, cant, or similar form of timber.

(c) Exception for depreciable personal property

(1) In general

Gain (not in excess of the depreciation adjustments) from the sale of depreciable personal property shall be allocated between sources in the United States and sources outside the United States—

(A) by treating the same proportion of such gain as sourced in the United States as the United States depreciation adjustments with respect to such property bear to the total depreciation adjustments, and

(B) by treating the remaining portion of such gain as sourced outside the United States.

(2) Gain in excess of depreciation

Gain (in excess of the depreciation adjustments) from the sale of depreciable personal property shall be sourced as if such property were inventory property.

(3) United States depreciation adjustments

For purposes of this subsection—

(A) In general

The term ''United States depreciation adjustments'' means the portion of the depreciation adjustments to the adjusted basis of the property which are attributable to the depreciation deductions allowable in computing taxable income from sources in the United States.

(B) Special rule for certain property

Except in the case of property of a kind described in section 168(g)(4), if, for any taxable year—

(i) such property is used predominantly in the United States, or

(ii) such property is used predominantly outside the United States,

all of the depreciation deductions allowable for such year shall be treated as having been allocated to income from sources in the United States (or, where clause (ii) applies, from sources outside the United States).

(4) Other definitions

For purposes of this subsection—

(A) Depreciable personal property

The term ''depreciable personal property'' means any personal property if the adjusted basis of such property includes depreciation adjustments.

(B) Depreciation adjustments

The term ''depreciation adjustments'' means adjustments reflected in the adjusted basis of any property on account of depreciation deductions (whether allowed with respect to such property or other property and whether allowed to the taxpayer or to any other person).

(C) Depreciation deductions

The term ''depreciation deductions'' means any deductions for depreciation or amortization or any other deduction allowable under any provision of this chapter which treats an otherwise capital expenditure as a deductible expense.

(d) Exception for intangibles

(1) In general

In the case of any sale of an intangible—

(A) this section shall apply only to the extent the payments in consideration of such sale are not contingent on the productivity, use, or disposition of the intangible, and

(B) to the extent such payments are so contingent, the source of such payments shall be determined under this part in the same manner as if such payments were royalties.

(2) Intangible

For purposes of paragraph (1), the term ''intangible'' means any patent, copyright, secret process or formula, goodwill, trademark, trade brand, franchise, or other like property.

(3) Special rule in the case of goodwill

To the extent this section applies to the sale of goodwill, payments in consideration of such sale shall be treated as from sources in the country in which such goodwill was generated.

(4) Coordination with subsection (c)

(A) Gain not in excess of depreciation adjustments sourced under subsection (c)

Notwithstanding paragraph (1), any gain from the sale of an intangible shall be sourced under subsection (c) to the extent such gain does not exceed the depreciation adjustments with respect to such intangible.

(B) Subsection (c)(2) not to apply to intangibles

Paragraph (2) of subsection (c) shall not apply to any gain from the sale of an intangible.

(e) Special rules for sales through offices or fixed places of business

(1) Sales by residents

(A) In general

In the case of income not sourced under subsection (b), (c), (d)(1)(B) or (3), or (f), if a

United States resident maintains an office or other fixed place of business in a foreign country, income from sales of personal property attributable to such office or other fixed place of business shall be sourced outside the United States.

(B) Tax must be imposed

Subparagraph (A) shall not apply unless an income tax equal to at least 10 percent of the income from the sale is actually paid to a foreign country with respect to such income.

(2) Sales by nonresidents

(A) In general

Notwithstanding any other provisions of this part, if a nonresident maintains an office or other fixed place of business in the United States, income from any sale of personal property (including inventory property) attributable to such office or other fixed place of business shall be sourced in the United States. The preceding sentence shall not apply for purposes of section 971 (defining export trade corporation).

(B) Exception

Subparagraph (A) shall not apply to any sale of inventory property which is sold for use, disposition, or consumption outside the United States if an office or other fixed place of business of the taxpayer in a foreign country materially participated in the sale.

(3) Sales attributable to an office or other fixed place of business

The principles of section 864(c)(5) shall apply in determining whether a taxpayer has an office or other fixed place of business and whether a sale is attributable to such an office or other fixed place of business.

(f) Stock of affiliates

If—

(1) a United States resident sells stock in an affiliate which is a foreign corporation,

(2) such sale occurs in a foreign country in which such affiliate is engaged in the active conduct of a trade or business, and

(3) more than 50 percent of the gross income of such affiliate for the 3-year period ending with the close of such affiliate's taxable year immediately preceding the year in which the sale occurred was derived from the active conduct of a trade or business in such foreign country,

any gain from such sale shall be sourced outside the United States. For purposes of paragraphs (2) and (3), the United States resident may elect to treat an affiliate and all other corporations which are wholly owned (directly or indirectly) by the affiliate as one corporation.

(g) United States resident; nonresident

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection—

(A) United States resident

The term ''United States resident'' means—

(i) any individual who—

(I) is a United States citizen or a resident alien and does not have a tax home (as defined in section 911(d)(3)) in a foreign country, or

(II) is a nonresident alien and has a tax home (as so defined) in the United States, and

(ii) any corporation, trust, or estate which is a United States person (as defined in section 7701(a)(30)).

(B) Nonresident

The term ''nonresident'' means any person other than a United States resident.

(2) Special rules for United States citizens and resident aliens

For purposes of this section, a United States citizen or resident alien shall not be treated as a nonresident with respect to any sale of personal property unless an income tax equal to at least 10 percent of the gain derived from such sale is actually paid to a foreign country with respect to that gain.

(3) Special rule for certain stock sales by residents of Puerto Rico

Paragraph (2) shall not apply to the sale by an individual who was a bona fide resident of Puerto Rico during the entire taxable year of stock in a corporation if—

(A) such corporation is engaged in the active conduct of a trade or business in Puerto Rico, and

(B) more than 50 percent of its gross income for the 3-year period ending with the close of such corporation's taxable year immediately preceding the year in which such sale occurred was derived from the active conduct of a trade or business in Puerto Rico.

For purposes of the preceding sentence, the taxpayer may elect to treat a corporation and all other corporations which are wholly owned (directly or indirectly) by such corporation as one corporation.

(h) Treatment of gains from sale of certain stock or intangibles and from certain liquidations

(1) In general

In the case of gain to which this subsection applies—

(A) such gain shall be sourced outside the United States, but

(B) subsections (a), (b), and (c) of section 904 and sections 902, 907, and 960 shall be applied separately with respect to such gain.

(2) Gain to which subsection applies

This subsection shall apply to—

(A) Gain from sale of certain stock or intangibles

Any gain—

(i) which is from the sale of stock in a foreign corporation or an intangible (as defined in subsection (d)(2)) and which would otherwise be sourced in the United States under this section,

(ii) which, under a treaty obligation of the United States (applied without regard

to this section), would be sourced outside the United States, and

(iii) with respect to which the taxpayer chooses the benefits of this subsection.

(B) Gain from liquidation in possession

Any gain which is derived from the receipt of any distribution in liquidation of a corporation—

(i) which is organized in a possession of the United States, and

(ii) more than 50 percent of the gross income of which during the 3-taxable year period ending with the close of the taxable year immediately preceding the taxable year in which the distribution is received is from the active conduct of a trade or business in such possession.

(i) Other definitions

For purposes of this section—

(1) Inventory property

The term ''inventory property'' means personal property described in paragraph (1) of section 1221(a).

(2) Sale includes exchange

The term ''sale'' includes an exchange or any other disposition.

(3) Treatment of possessions

Any possession of the United States shall be treated as a foreign country.

(4) Affiliate

The term ''affiliate'' means a member of the same affiliated group (within the meaning of section 1504(a) without regard to section 1504(b)).

(5) Treatment of partnerships

In the case of a partnership, except as provided in regulations, this section shall be applied at the partner level.

(j) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purpose of this section, including regulations—

(1) relating to the treatment of losses from sales of personal property,

(2) applying the rules of this section to income derived from trading in futures contracts, forward contracts, options contracts, and other instruments, and

(3) providing that, subject to such conditions (which may include provisions comparable to section 877) as may be provided in such regulations, subsections (e)(1)(B) and (g)(2) shall not apply for purposes of sections 931, 933, and 936.

(k) Cross references

(1) For provisions relating to the characterization as dividends for source purposes of gains from the sale of stock in certain foreign corporations, see section 1248.

(2) For sourcing of income from certain foreign currency transactions, see section 988.

(Added Pub. L. 99–514, title XII, §1211(a), Oct. 22, 1986, 100 Stat. 2533; amended Pub. L. 100–647, title I, §1012(d)(1)–(6), (8), (9), (11), (12), Nov. 10, 1988, 102 Stat. 3497–3499; Pub. L. 101–508, title XI, §11813(b)(18), Nov. 5, 1990, 104 Stat. 1388–555; Pub. L. 103–66, title XIII, §13239(c), Aug. 10, 1993, 107 Stat. 509; Pub. L. 104–188, title I, §1704(f)(4)(A), Aug. 20, 1996, 110 Stat. 1880; Pub. L. 106–170, title V, §532(c)(1)(E), Dec. 17, 1999, 113 Stat. 1930.)

AMENDMENTS

1999—Subsec. (i)(1). Pub. L. 106–170 substituted ''section 1221(a)'' for ''section 1221''.

1996—Subsec. (b)(2). Pub. L. 104–188 substituted ''863'' for ''863(b)''.

1993—Subsec. (b). Pub. L. 103–66 inserted at end ''Notwithstanding the preceding sentence, any income from the sale of any unprocessed timber which is a softwood and was cut from an area in the United States shall be sourced in the United States and the rules of sections 862(a)(6) and 863(b) shall not apply to any such income. For purposes of the preceding sentence, the term 'unprocessed timber' means any log, cant, or similar form of timber.''

1990—Subsec. (c)(3)(B). Pub. L. 101–508 substituted ''section 168(g)(4)'' for ''section 48(a)(2)(B)''.

1988—Subsec. (d)(2). Pub. L. 100–647, §1012(d)(12), inserted ''franchise,'' after ''trade brand,''.

Subsec. (d)(4). Pub. L. 100–647, §1012(d)(1), added par. (4).

Subsec. (e)(1)(A). Pub. L. 100–647, §1012(d)(2), (9), substituted ''(d)(1)(B) or (3)'' for ''(d)'' and ''in a foreign country'' for first reference to ''outside the United States''.

Subsec. (e)(2)(B). Pub. L. 100–647, §1012(d)(5), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Subparagraph (A) shall not apply to—

''(i) any sale of inventory property which is sold for use, disposition, or consumption outside the United States if an office or other fixed place of business of the taxpayer outside the United States materially participated in the sale, or

''(ii) any amount included in gross income under section 951(a)(1)(A).''

Subsec. (f). Pub. L. 100–647, §1012(d)(4), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''If—

''(1) a United States resident sells stock in an affiliate which is a foreign corporation,

''(2) such affiliate is engaged in the active conduct of a trade or business, and

''(3) such sale occurs in the foreign country in which the affiliate derived more than 50 percent of its gross income for the 3-year period ending with the close of the affiliate's taxable year immediately preceding the year during which such sale occurred,

any gain from such sale shall be sourced outside the United States.''

Subsec. (g)(1)(A)(i). Pub. L. 100–647, §1012(d)(11), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''any individual who has a tax home (as defined in section 911(d)(3)) in the United States, and''.

Subsec. (g)(1)(A)(ii). Pub. L. 100–647, §1012(d)(3)(A), struck out ''partnership,'' after ''corporation,''.

Subsec. (g)(3). Pub. L. 100–647, §1012(d)(6)(A), added par. (3).

Subsec. (h). Pub. L. 100–647, §1012(d)(8), added subsec. (h) and redesignated former subsec. (h) as (i).

Pub. L. 100–647, §1012(d)(3)(B), added par. (5) to subsec. (h) prior to redesignation as subsec. (i).

Subsec. (i). Pub. L. 100–647, §1012(d)(8), redesignated former subsec. (h) as (i). Former subsec. (i) redesignated (j).

Pub. L. 100–647, §1012(d)(6)(B), added par. (3) to subsec. (i) prior to redesignation as subsec. (j).

Subsec. (i)(5). Pub. L. 100–647, §1012(d)(3)(B), added par. (5) to subsec. (h) prior to redesignation as subsec. (i).

Subsec. (j). Pub. L. 100–647, §1012(d)(8), redesignated former subsec. (i) as (j). Former subsec. (j) redesignated (k).

Subsec. (j)(3). Pub. L. 100–647, §1012(d)(6)(B), added par. (3) to subsec. (i) prior to redesignation as subsec. (j).

Subsec. (k). Pub. L. 100–647, §1012(d)(8), redesignated former subsec. (j) as (k).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1704(f)(4)(B) of Pub. L. 104–188 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the amendments made by section 1211 of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13239(e) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 927, 954, and 993 of this title] shall apply to sales, exchanges, or other dispositions after the date of the enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Dec. 31, 1990, but not applicable to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101–508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(d)(5) of Pub. L. 100–647 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1987.

Amendment by section 1012(d)(1)–(4), (6), (8), (9), (11), (12) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 1211(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section, amending sections 861 to 864, 871, 881, and 904 of this title, and enacting provisions set out below] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL RULE FOR FOREIGN PERSONS.—In the case of any foreign person other than any controlled foreign corporations (within the meaning of section 957(a) of the Internal Revenue Code of 1954 [now 1986]), the amendments made by this section shall apply to transactions entered into after March 18, 1986.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1211(a) of Pub. L. 99–514 (enacting this section) to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

STUDY OF SOURCE RULES FOR SALES OF INVENTORY PROPERTY

Section 1211(d) of Pub. L. 99–514 directed Secretary of the Treasury or his delegate to conduct a study of source rules for sales of inventory property and, not later than Sept. 30, 1987 (due date extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388–559), to submit to Committee on Ways and Means of House of Representatives and Committee on Finance of Senate a report of such study (together with recommendations he deemed advisable).

PART II—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Subpart
A. Nonresident alien individuals.
B. Foreign corporations.
C. Tax on gross transportation income.
D. Miscellaneous provisions.

AMENDMENTS

1986—Pub. L. 99–514, title XII, §1212(b)(2), Oct. 22, 1986, 100 Stat. 2538, added item for subpart C and redesignated item for former subpart C as D.

SUBPART A—NONRESIDENT ALIEN INDIVIDUALS

Sec.
871. Tax on nonresident alien individuals.
872. Gross income.
873. Deductions.
874. Allowance of deductions and credits.
875. Partnerships; beneficiaries of estates and trusts.
876. Alien residents of Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands.
877. Expatriation to avoid tax.
877A. Tax responsibilities of expatriation.
878. Foreign educational, charitable, and certain other exempt organizations.
879. Tax treatment of certain community income in the case of nonresident alien individuals.

AMENDMENTS

2008—Pub. L. 110–245, title III, §301(f), June 17, 2008, 122 Stat. 1647, added item 877A.

1986—Pub. L. 99–514, title XII, §1272(d)(13), Oct. 22, 1986, 100 Stat. 2595, inserted '', Guam, American Samoa, or the Northern Mariana Islands'' in item 876.

1984—Pub. L. 98–369, div. A, title I, §139(b)(2), July 18, 1984, 98 Stat. 677, substituted ''nonresident alien individuals'' for ''a resident or citizen of the United States who is married to a nonresident alien individual'' in item 879.

1976—Pub. L. 94–455, title X, §1012(b)(3)(A), Oct. 4, 1976, 90 Stat. 1614, added item 879.

1966—Pub. L. 89–809, title I, §103(e)(2), (f)(2), Nov. 13, 1966, 80 Stat. 1551, 1552, inserted ''; beneficiaries of estates and trusts'' in item 875, added item 877, and redesignated former item 877 as 878.

§ 871. Tax on nonresident alien individuals

(a) Income not connected with United States business—30 percent tax

(1) Income other than capital gains

Except as provided in subsection (h), there is hereby imposed for each taxable year a tax of

30 percent of the amount received from sources within the United States by a nonresident alien individual as—

(A) interest (other than original issue discount as defined in section 1273), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income,

(B) gains described in section 631(b) or (c), and gains on transfers described in section 1235 made on or before October 4, 1966,

(C) in the case of—

(i) a sale or exchange of an original issue discount obligation, the amount of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and

(ii) a payment on an original issue discount obligation, an amount equal to the original issue discount accruing while such obligation was held by the nonresident alien individual (except that such original issue discount shall be taken into account under this clause only to the extent such discount was not theretofore taken into account under this clause and only to the extent that the tax thereon does not exceed the payment less the tax imposed by subparagraph (A) thereon), and

(D) gains from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property, or of any interest in any such property, to the extent such gains are from payments which are contingent on the productivity, use, or disposition of the property or interest sold or exchanged,

but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

(2) Capital gains of aliens present in the United States 183 days or more

In the case of a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year, there is hereby imposed for such year a tax of 30 percent of the amount by which his gains, derived from sources within the United States, from the sale or exchange at any time during such year of capital assets exceed his losses, allocable to sources within the United States, from the sale or exchange at any time during such year of capital assets. For purposes of this paragraph, gains and losses shall be taken into account only if, and to the extent that, they would be recognized and taken into account if such gains and losses were effectively connected with the conduct of a trade or business within the United States, except that such gains and losses shall be determined without regard to section 1202 and such losses shall be determined without the benefits of the capital loss carryover provided in section 1212. Any gain or loss which is taken into account in determining the tax under paragraph (1) or subsection (b) shall not be taken into account in determining the tax under this paragraph. For purposes of the 183-day requirement of this paragraph, a nonresident alien individual not engaged in trade or business within the United States who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(3) Taxation of social security benefits

For purposes of this section and section 1441—

(A) 85 percent of any social security benefit (as defined in section 86(d)) shall be included in gross income (notwithstanding section 207 of the Social Security Act), and

(B) section 86 shall not apply.

For treatment of certain citizens of possessions of the United States, see section 932(c).[1]

(b) Income connected with United States business—graduated rate of tax

(1) Imposition of tax

A nonresident alien individual engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 1 or 55 on his taxable income which is effectively connected with the conduct of a trade or business within the United States.

(2) Determination of taxable income

In determining taxable income for purposes of paragraph (1), gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States.

(c) Participants in certain exchange or training programs

For purposes of this section, a nonresident alien individual who (without regard to this subsection) is not engaged in trade or business within the United States and who is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15)(F), (J), (M), or (Q)), shall be treated as a nonresident alien individual engaged in trade or business within the United States, and any income described in the second sentence of section 1441(b) which is received by such individual shall, to the extent derived from sources within the United States, be treated as effectively connected with the conduct of a trade or business within the United States.

(d) Election to treat real property income as income connected with United States business

(1) In general

A nonresident alien individual who during the taxable year derives any income—

(A) from real property held for the production of income and located in the United States, or from any interest in such real property, including (i) gains from the sale or exchange of such real property or an interest

[1] See References in Text note below.

therein, (ii) rents or royalties from mines, wells, or other natural deposits, and (iii) gains described in section 631(b) or (c), and

(B) which, but for this subsection, would not be treated as income which is effectively connected with the conduct of a trade or business within the United States,

may elect for such taxable year to treat all such income as income which is effectively connected with the conduct of a trade or business within the United States. In such case, such income shall be taxable as provided in subsection (b)(1) whether or not such individual is engaged in trade or business within the United States during the taxable year. An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary with respect to any taxable year.

(2) Election after revocation

If an election has been made under paragraph (1) and such election has been revoked, a new election may not be made under such paragraph for any taxable year before the 5th taxable year which begins after the first taxable year for which such revocation is effective, unless the Secretary consents to such new election.

(3) Form and time of election and revocation

An election under paragraph (1), and any revocation of such an election, may be made only in such manner and at such time as the Secretary may by regulations prescribe.

[(e) Repealed. Pub. L. 99–514, title XII, § 1211(b)(5), Oct. 22, 1986, 100 Stat. 2536]

(f) Certain annuities received under qualified plans

(1) In general

For purposes of this section, gross income does not include any amount received as an annuity under a qualified annuity plan described in section 403(a)(1), or from a qualified trust described in section 401(a) which is exempt from tax under section 501(a), if—

(A) all of the personal services by reason of which the annuity is payable were either—

(i) personal services performed outside the United States by an individual who, at the time of performance of such personal services, was a nonresident alien, or

(ii) personal services described in section 864(b)(1) performed within the United States by such individual, and

(B) at the time the first amount is paid as an annuity under the annuity plan or by the trust, 90 percent or more of the employees for whom contributions or benefits are provided under such annuity plan, or under the plan or plans of which the trust is a part, are citizens or residents of the United States.

(2) Exclusion

Income received during the taxable year which would be excluded from gross income under this subsection but for the requirement of paragraph (1)(B) shall not be included in gross income if—

(A) the recipient's country of residence grants a substantially equivalent exclusion to residents and citizens of the United States; or

(B) the recipient's country of residence is a beneficiary developing country under title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.).

(g) Special rules for original issue discount

For purposes of this section and section 881—

(1) Original issue discount obligation

(A) In general

Except as provided in subparagraph (B), the term ''original issue discount obligation'' means any bond or other evidence of indebtedness having original issue discount (within the meaning of section 1273).

(B) Exceptions

The term ''original issue discount obligation'' shall not include—

(i) Certain short-term obligations

Any obligation payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer).

(ii) Tax-exempt obligations

Any obligation the interest on which is exempt from tax under section 103 or under any other provision of law without regard to the identity of the holder.

(2) Determination of portion of original issue discount accruing during any period

The determination of the amount of the original issue discount which accrues during any period shall be made under the rules of section 1272 (or the corresponding provisions of prior law) without regard to any exception for short-term obligations.

(3) Source of original issue discount

Except to the extent provided in regulations prescribed by the Secretary, the determination of whether any amount described in subsection (a)(1)(C) is from sources within the United States shall be made at the time of the payment (or sale or exchange) as if such payment (or sale or exchange) involved the payment of interest.

(4) Stripped bonds

The provisions of section 1286 (relating to the treatment of stripped bonds and stripped coupons as obligations with original issue discount) shall apply for purposes of this section.

(h) Repeal of tax on interest of nonresident alien individuals received from certain portfolio debt investments

(1) In general

In the case of any portfolio interest received by a nonresident individual from sources within the United States, no tax shall be imposed under paragraph (1)(A) or (1)(C) of subsection (a).

(2) Portfolio interest

For purposes of this subsection, the term ''portfolio interest'' means any interest (including original issue discount) which would

be subject to tax under subsection (a) but for this subsection and which is described in any of the following subparagraphs:

(A) Certain obligations which are not registered

Interest which is paid on any obligation which—

(i) is not in registered form, and

(ii) is described in section 163(f)(2)(B).

(B) Certain registered obligations

Interest which is paid on an obligation—

(i) which is in registered form, and

(ii) with respect to which the United States person who would otherwise be required to deduct and withhold tax from such interest under section 1441(a) receives a statement (which meets the requirements of paragraph (5)) that the beneficial owner of the obligation is not a United States person.

(3) Portfolio interest not to include interest received by 10-percent shareholders

For purposes of this subsection—

(A) In general

The term ''portfolio interest'' shall not include any interest described in subparagraph (A) or (B) of paragraph (2) which is received by a 10-percent shareholder.

(B) 10-Percent shareholder

The term ''10-percent shareholder'' means—

(i) in the case of an obligation issued by a corporation, any person who owns 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote, or

(ii) in the case of an obligation issued by a partnership, any person who owns 10 percent or more of the capital or profits interest in such partnership.

(C) Attribution rules

For purposes of determining ownership of stock under subparagraph (B)(i) the rules of section 318(a) shall apply, except that—

(i) section 318(a)(2)(C) shall be applied without regard to the 50-percent limitation therein,

(ii) section 318(a)(3)(C) shall be applied—

(I) without regard to the 50-percent limitation therein; and

(II) in any case where such section would not apply but for subclause (I), by considering a corporation as owning the stock (other than stock in such corporation) which is owned by or for any shareholder of such corporation in that proportion which the value of the stock which such shareholder owns in such corporation bears to the value of all stock in such corporation, and

(iii) any stock which a person is treated as owning after application of section 318(a)(4) shall not, for purposes of applying paragraphs (2) and (3) of section 318(a), be treated as actually owned by such person.

Under regulations prescribed by the Secretary, rules similar to the rules of the preceding sentence shall be applied in determining the ownership of the capital or profits interest in a partnership for purposes of subparagraph (B)(ii).

(4) Portfolio interest not to include certain contingent interest

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term ''portfolio interest'' shall not include—

(i) any interest if the amount of such interest is determined by reference to—

(I) any receipts, sales or other cash flow of the debtor or a related person,

(II) any income or profits of the debtor or a related person,

(III) any change in value of any property of the debtor or a related person, or

(IV) any dividend, partnership distributions, or similar payments made by the debtor or a related person, or

(ii) any other type of contingent interest that is identified by the Secretary by regulation, where a denial of the portfolio interest exemption is necessary or appropriate to prevent avoidance of Federal income tax.

(B) Related person

The term ''related person'' means any person who is related to the debtor within the meaning of section 267(b) or 707(b)(1), or who is a party to any arrangement undertaken for a purpose of avoiding the application of this paragraph.

(C) Exceptions

Subparagraph (A)(i) shall not apply to—

(i) any amount of interest solely by reason of the fact that the timing of any interest or principal payment is subject to a contingency,

(ii) any amount of interest solely by reason of the fact that the interest is paid with respect to nonrecourse or limited recourse indebtedness,

(iii) any amount of interest all or substantially all of which is determined by reference to any other amount of interest not described in subparagraph (A) (or by reference to the principal amount of indebtedness on which such other interest is paid),

(iv) any amount of interest solely by reason of the fact that the debtor or a related person enters into a hedging transaction to manage the risk of interest rate or currency fluctuations with respect to such interest,

(v) any amount of interest determined by reference to—

(I) changes in the value of property (including stock) that is actively traded (within the meaning of section 1092(d)) other than property described in section 897(c)(1) or (g),

(II) the yield on property described in subclause (I), other than a debt instrument that pays interest described in sub-

paragraph (A), or stock or other property that represents a beneficial interest in the debtor or a related person, or

(III) changes in any index of the value of property described in subclause (I) or of the yield on property described in subclause (II), and

(vi) any other type of interest identified by the Secretary by regulation.

(D) Exception for certain existing indebtedness

Subparagraph (A) shall not apply to any interest paid or accrued with respect to any indebtedness with a fixed term—

(i) which was issued on or before April 7, 1993, or

(ii) which was issued after such date pursuant to a written binding contract in effect on such date and at all times thereafter before such indebtedness was issued.

(5) Certain statements

A statement with respect to any obligation meets the requirements of this paragraph if such statement is made by—

(A) the beneficial owner of such obligation, or

(B) a securities clearing organization, a bank, or other financial institution that holds customers' securities in the ordinary course of its trade or business.

The preceding sentence shall not apply to any statement with respect to payment of interest on any obligation by any person if, at least one month before such payment, the Secretary has published a determination that any statement from such person (or any class including such person) does not meet the requirements of this paragraph.

(6) Secretary may provide subsection not to apply in cases of inadequate information exchange

(A) In general

If the Secretary determines that the exchange of information between the United States and a foreign country is inadequate to prevent evasion of the United States income tax by United States persons, the Secretary may provide in writing (and publish a statement) that the provisions of this subsection shall not apply to payments of interest to any person within such foreign country (or payments addressed to, or for the account of, persons within such foreign country) during the period—

(i) beginning on the date specified by the Secretary, and

(ii) ending on the date that the Secretary determines that the exchange of information between the United States and the foreign country is adequate to prevent the evasion of United States income tax by United States persons.

(B) Exception for certain obligations

Subparagraph (A) shall not apply to the payment of interest on any obligation which is issued on or before the date of the publication of the Secretary's determination under such subparagraph.

(7) Registered form

For purposes of this subsection, the term ''registered form'' has the same meaning given such term by section 163(f).

(i) Tax not to apply to certain interest and dividends

(1) In general

No tax shall be imposed under paragraph (1)(A) or (1)(C) of subsection (a) on any amount described in paragraph (2).

(2) Amounts to which paragraph (1) applies

The amounts described in this paragraph are as follows:

(A) Interest on deposits, if such interest is not effectively connected with the conduct of a trade or business within the United States.

(B) The active foreign business percentage of—

(i) any dividend paid by an existing 80/20 company, and

(ii) any interest paid by an existing 80/20 company.

(C) Income derived by a foreign central bank of issue from bankers' acceptances.

(D) Dividends paid by a foreign corporation which are treated under section 861(a)(2)(B) as income from sources within the United States.

(3) Deposits

For purposes of paragraph (2), the term ''deposits'' means amounts which are—

(A) deposits with persons carrying on the banking business,

(B) deposits or withdrawable accounts with savings institutions chartered and supervised as savings and loan or similar associations under Federal or State law, but only to the extent that amounts paid or credited on such deposits or accounts are deductible under section 591 (determined without regard to sections 265 and 291) in computing the taxable income of such institutions, and

(C) amounts held by an insurance company under an agreement to pay interest thereon.

(j) Exemption for certain gambling winnings

No tax shall be imposed under paragraph (1)(A) of subsection (a) on the proceeds from a wager placed in any of the following games: blackjack, baccarat, craps, roulette, or big-6 wheel. The preceding sentence shall not apply in any case where the Secretary determines by regulation that the collection of the tax is administratively feasible.

(k) Exemption for certain dividends of regulated investment companies

(1) Interest-related dividends

(A) In general

Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1)(A) of subsection (a) on any interest-related dividend received from a regulated investment company which meets the requirements of section 852(a) for the taxable year with respect to which the dividend is paid.

(B) Exceptions

Subparagraph (A) shall not apply—

(i) to any interest-related dividend received from a regulated investment company by a person to the extent such dividend is attributable to interest (other than interest described in subparagraph (E)(i) or (iii)) received by such company on indebtedness issued by such person or by any corporation or partnership with respect to which such person is a 10-percent shareholder,

(ii) to any interest-related dividend with respect to stock of a regulated investment company unless the person who would otherwise be required to deduct and withhold tax from such dividend under chapter 3 receives a statement (which meets requirements similar to the requirements of subsection (h)(5)) that the beneficial owner of such stock is not a United States person, and

(iii) to any interest-related dividend paid to any person within a foreign country (or any interest-related dividend payment addressed to, or for the account of, persons within such foreign country) during any period described in subsection (h)(6) with respect to such country.

Clause (iii) shall not apply to any dividend with respect to any stock which was acquired on or before the date of the publication of the Secretary's determination under subsection (h)(6).

(C) Interest-related dividend

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii), an interest related dividend is any dividend, or part thereof, which is reported by the company as an interest related dividend in written statements furnished to its shareholders.

(ii) Excess reported amounts

If the aggregate reported amount with respect to the company for any taxable year exceeds the qualified net interest income of the company for such taxable year, an interest related dividend is the excess of—

(I) the reported interest related dividend amount, over

(II) the excess reported amount which is allocable to such reported interest related dividend amount.

(iii) Allocation of excess reported amount

(I) In general

Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported interest related dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported interest related dividend amount bears to the aggregate reported amount.

(II) Special rule for noncalendar year taxpayers

In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting ''post-December reported amount'' for ''aggregate reported amount'' and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

(iv) Definitions

For purposes of this subparagraph—

(I) Reported interest related dividend amount

The term ''reported interest related dividend amount'' means the amount reported to its shareholders under clause (i) as an interest related dividend.

(II) Excess reported amount

The term ''excess reported amount'' means the excess of the aggregate reported amount over the qualified net interest income of the company for the taxable year.

(III) Aggregate reported amount

The term ''aggregate reported amount'' means the aggregate amount of dividends reported by the company under clause (i) as interest related dividends for the taxable year (including interest related dividends paid after the close of the taxable year described in section 855).

(IV) Post-December reported amount

The term ''post-December reported amount'' means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

(v) Termination

The term ''interest related dividend'' shall not include any dividend with respect to any taxable year of the company beginning after December 31, 2011.

(D) Qualified net interest income

For purposes of subparagraph (C), the term ''qualified net interest income'' means the qualified interest income of the regulated investment company reduced by the deductions properly allocable to such income.

(E) Qualified interest income

For purposes of subparagraph (D), the term ''qualified interest income'' means the sum of the following amounts derived by the regulated investment company from sources within the United States:

(i) Any amount includible in gross income as original issue discount (within the meaning of section 1273) on an obligation payable 183 days or less from the date of original issue (without regard to the period held by the company).

(ii) Any interest includible in gross income (including amounts recognized as ordinary income in respect of original issue discount or market discount or acquisition

discount under part V of subchapter P and such other amounts as regulations may provide) on an obligation which is in registered form; except that this clause shall not apply to—

(I) any interest on an obligation issued by a corporation or partnership if the regulated investment company is a 10-percent shareholder in such corporation or partnership, and

(II) any interest which is treated as not being portfolio interest under the rules of subsection (h)(4).

(iii) Any interest referred to in subsection (i)(2)(A) (without regard to the trade or business of the regulated investment company).

(iv) Any interest-related dividend includable in gross income with respect to stock of another regulated investment company.

(F) 10-percent shareholder

For purposes of this paragraph, the term ''10-percent shareholder'' has the meaning given such term by subsection (h)(3)(B).

(2) Short-term capital gain dividends

(A) In general

Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1)(A) of subsection (a) on any short-term capital gain dividend received from a regulated investment company which meets the requirements of section 852(a) for the taxable year with respect to which the dividend is paid.

(B) Exception for aliens taxable under subsection (a)(2)

Subparagraph (A) shall not apply in the case of any nonresident alien individual subject to tax under subsection (a)(2).

(C) Short-term capital gain dividend

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii), the term ''short-term capital gain dividend'' means any dividend, or part thereof, which is reported by the company as a short-term capital gain dividend in written statements furnished to its shareholders.

(ii) Excess reported amounts

If the aggregate reported amount with respect to the company for any taxable year exceeds the qualified short-term gain of the company for such taxable year, the term ''short-term capital gain dividend'' means the excess of—

(I) the reported short-term capital gain dividend amount, over

(II) the excess reported amount which is allocable to such reported short-term capital gain dividend amount.

(iii) Allocation of excess reported amount

(I) In general

Except as provided in subclause (II), the excess reported amount (if any) which is allocable to the reported short-term capital gain dividend amount is that portion of the excess reported amount which bears the same ratio to the excess reported amount as the reported short-term capital gain dividend amount bears to the aggregate reported amount.

(II) Special rule for noncalendar year taxpayers

In the case of any taxable year which does not begin and end in the same calendar year, if the post-December reported amount equals or exceeds the excess reported amount for such taxable year, subclause (I) shall be applied by substituting ''post-December reported amount'' for ''aggregate reported amount'' and no excess reported amount shall be allocated to any dividend paid on or before December 31 of such taxable year.

(iv) Definitions

For purposes of this subparagraph—

(I) Reported short-term capital gain dividend amount

The term ''reported short-term capital gain dividend amount'' means the amount reported to its shareholders under clause (i) as a short-term capital gain dividend.

(II) Excess reported amount

The term ''excess reported amount'' means the excess of the aggregate reported amount over the qualified short-term gain of the company for the taxable year.

(III) Aggregate reported amount

The term ''aggregate reported amount'' means the aggregate amount of dividends reported by the company under clause (i) as short-term capital gain dividends for the taxable year (including short-term capital gain dividends paid after the close of the taxable year described in section 855).

(IV) Post-December reported amount

The term ''post-December reported amount'' means the aggregate reported amount determined by taking into account only dividends paid after December 31 of the taxable year.

(v) Termination

The term ''short-term capital gain dividend'' shall not include any dividend with respect to any taxable year of the company beginning after December 31, 2011.

(D) Qualified short-term gain

For purposes of subparagraph (C), the term ''qualified short-term gain'' means the excess of the net short-term capital gain of the regulated investment company for the taxable year over the net long-term capital loss (if any) of such company for such taxable year. For purposes of this subparagraph, the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain divi-

dend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain.

(E) Certain distributions

In the case of a distribution to which section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be treated as a short-term capital gain dividend to the shareholder (without regard to this subparagraph)—

(i) shall not be treated as a short-term capital gain dividend, and

(ii) shall be included in such shareholder's gross income as a dividend from the regulated investment company.

(*l*) Rules relating to existing 80/20 companies

For purposes of this subsection and subsection (i)(2)(B)—

(1) Existing 80/20 company

(A) In general

The term ''existing 80/20 company'' means any corporation if—

(i) such corporation met the 80-percent foreign business requirements of section 861(c)(1) (as in effect before the date of the enactment of this subsection) for such corporation's last taxable year beginning before January 1, 2011,

(ii) such corporation meets the 80-percent foreign business requirements of subparagraph (B) with respect to each taxable year after the taxable year referred to in clause (i), and

(iii) there has not been an addition of a substantial line of business with respect to such corporation after the date of the enactment of this subsection.

(B) Foreign business requirements

(i) In general

Except as provided in clause (iv), a corporation meets the 80-percent foreign business requirements of this subparagraph if it is shown to the satisfaction of the Secretary that at least 80 percent of the gross income from all sources of such corporation for the testing period is active foreign business income.

(ii) Active foreign business income

For purposes of clause (i), the term ''active foreign business income'' means gross income which—

(I) is derived from sources outside the United States (as determined under this subchapter), and

(II) is attributable to the active conduct of a trade or business in a foreign country or possession of the United States.

(iii) Testing period

For purposes of this subsection, the term ''testing period'' means the 3-year period ending with the close of the taxable year of the corporation preceding the payment (or such part of such period as may be applicable). If the corporation has no gross income for such 3-year period (or part thereof), the testing period shall be the taxable year in which the payment is made.

(iv) Transition rule

In the case of a taxable year for which the testing period includes 1 or more taxable years beginning before January 1, 2011—

(I) a corporation meets the 80-percent foreign business requirements of this subparagraph if and only if the weighted average of—

(aa) the percentage of the corporation's gross income from all sources that is active foreign business income (as defined in subparagraph (B) of section 861(c)(1) (as in effect before the date of the enactment of this subsection)) for the portion of the testing period that includes taxable years beginning before January 1, 2011, and

(bb) the percentage of the corporation's gross income from all sources that is active foreign business income (as defined in clause (ii) of this subparagraph) for the portion of the testing period, if any, that includes taxable years beginning on or after January 1, 2011,

is at least 80 percent, and

(II) the active foreign business percentage for such taxable year shall equal the weighted average percentage determined under subclause (I).

(2) Active foreign business percentage

Except as provided in paragraph (1)(B)(iv), the term ''active foreign business percentage'' means, with respect to any existing 80/20 company, the percentage which—

(A) the active foreign business income of such company for the testing period, is of

(B) the gross income of such company for the testing period from all sources.

(3) Aggregation rules

For purposes of applying paragraph (1) (other than subparagraphs (A)(i) and (B)(iv) thereof) and paragraph (2)—

(A) In general

The corporation referred to in paragraph (1)(A) and all of such corporation's subsidiaries shall be treated as one corporation.

(B) Subsidiaries

For purposes of subparagraph (A), the term ''subsidiary'' means any corporation in which the corporation referred to in subparagraph (A) owns (directly or indirectly) stock meeting the requirements of section 1504(a)(2) (determined by substituting ''50 percent'' for ''80 percent'' each place it appears and without regard to section 1504(b)(3)).

(4) Regulations

The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section, including regulations or other guidance which provide for the proper application of the aggregation rules described in paragraph (3).

(m) Treatment of dividend equivalent payments

(1) In general

For purposes of subsection (a), sections 881 and 4948(a), and chapters 3 and 4, a dividend equivalent shall be treated as a dividend from sources within the United States.

(2) Dividend equivalent

For purposes of this subsection, the term ''dividend equivalent'' means—

(A) any substitute dividend made pursuant to a securities lending or a sale-repurchase transaction that (directly or indirectly) is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States,

(B) any payment made pursuant to a specified notional principal contract that (directly or indirectly) is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States, and

(C) any other payment determined by the Secretary to be substantially similar to a payment described in subparagraph (A) or (B).

(3) Specified notional principal contract

For purposes of this subsection, the term ''specified notional principal contract'' means—

(A) any notional principal contract if—

(i) in connection with entering into such contract, any long party to the contract transfers the underlying security to any short party to the contract,

(ii) in connection with the termination of such contract, any short party to the contract transfers the underlying security to any long party to the contract,

(iii) the underlying security is not readily tradable on an established securities market,

(iv) in connection with entering into such contract, the underlying security is posted as collateral by any short party to the contract with any long party to the contract, or

(v) such contract is identified by the Secretary as a specified notional principal contract,

(B) in the case of payments made after the date which is 2 years after the date of the enactment of this subsection, any notional principal contract unless the Secretary determines that such contract is of a type which does not have the potential for tax avoidance.

(4) Definitions

For purposes of paragraph (3)(A)—

(A) Long party

The term ''long party'' means, with respect to any underlying security of any notional principal contract, any party to the contract which is entitled to receive any payment pursuant to such contract which is contingent upon, or determined by reference to, the payment of a dividend from sources within the United States with respect to such underlying security.

(B) Short party

The term ''short party'' means, with respect to any underlying security of any notional principal contract, any party to the contract which is not a long party with respect to such underlying security.

(C) Underlying security

The term ''underlying security'' means, with respect to any notional principal contract, the security with respect to which the dividend referred to in paragraph (2)(B) is paid. For purposes of this paragraph, any index or fixed basket of securities shall be treated as a single security.

(5) Payments determined on gross basis

For purposes of this subsection, the term ''payment'' includes any gross amount which is used in computing any net amount which is transferred to or from the taxpayer.

(6) Prevention of over-withholding

In the case of any chain of dividend equivalents one or more of which is subject to tax under subsection (a) or section 881, the Secretary may reduce such tax, but only to the extent that the taxpayer can establish that such tax has been paid with respect to another dividend equivalent in such chain, or is not otherwise due, or as the Secretary determines is appropriate to address the role of financial intermediaries in such chain. For purposes of this paragraph, a dividend shall be treated as a dividend equivalent.

(7) Coordination with chapters 3 and 4

For purposes of chapters 3 and 4, each person that is a party to any contract or other arrangement that provides for the payment of a dividend equivalent shall be treated as having control of such payment.

(n) Cross references

(1) For tax treatment of certain amounts distributed by the United States to nonresident alien individuals, see section 402(e)(2).

(2) For taxation of nonresident alien individuals who are expatriate United States citizens, see section 877.

(3) For doubling of tax on citizens of certain foreign countries, see section 891.

(4) For adjustment of tax in case of nationals or residents of certain foreign countries, see section 896.

(5) For withholding of tax at source on nonresident alien individuals, see section 1441.

(6) For election to treat married nonresident alien individual as resident of United States in certain cases, see subsections (g) and (h) of section 6013.

(7) For special tax treatment of gain or loss from the disposition by a nonresident alien individual of a United States real property interest, see section 897.

(Aug. 16, 1954, ch. 736, 68A Stat. 278; Pub. L. 85–866, title I, §§ 40(a), 41(a), Sept. 2, 1958, 72 Stat. 1638, 1639; Pub. L. 86–437, § 2(b), Apr. 22, 1960, 74 Stat. 79; Pub. L. 87–256, § 110(b), Sept. 21, 1961, 75 Stat. 535; Pub. L. 88–272, title I, § 113(b), title II, § 201(d)(12), Feb. 26, 1964, 78 Stat. 24, 32; Pub. L. 89–809, title I, § 103(a)(1), Nov. 13, 1966, 80 Stat. 1547; Pub. L. 92–178, title III, § 313(a), (b), Dec. 10, 1971, 85 Stat. 526, 527; Pub. L. 93–406, title II, § 2005(c)(8), Sept. 2, 1974, 88 Stat. 992; Pub. L.

94–455, title X, §1012(a)(2), title XIX, §§1901(b)(3)(I), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1613, 1793, 1834; Pub. L. 95–600, title IV, §§401(b)(3), 421(e)(4), Nov. 6, 1978, 92 Stat. 2867, 2876; Pub. L. 96–222, title I, §104(a)(4)(H)(v), Apr. 1, 1980, 94 Stat. 217; Pub. L. 96–499, title XI, §1122(c)(1), Dec. 5, 1980, 94 Stat. 2687; Pub. L. 96–605, title II, §227(a), Dec. 28, 1980, 94 Stat. 3530; Pub. L. 97–34, title VII, §725(c)(1), Aug. 13, 1981, 95 Stat. 346; Pub. L. 98–21, title I, §121(c)(1), title III, §335(b)(2)(B), Apr. 20, 1983, 97 Stat. 82, 130; Pub. L. 98–369, div. A, title I, §§42(a)(9), 127(a), 128(a), title IV, §412(b)(1), July 18, 1984, 98 Stat. 557, 648, 653, 792; Pub. L. 99–272, title XII, §12103(b), Apr. 7, 1986, 100 Stat. 285; Pub. L. 99–514, title III, §301(b)(9), title XII, §§1211(b)(4), (5), 1214(c)(1), title XVIII, §1810(d)(1)(A), (2), (3)(A), (B), (e)(2)(A), Oct. 22, 1986, 100 Stat. 2217, 2536, 2542, 2825, 2826; Pub. L. 100–647, title I, §1001(d)(2)(B), title VI, §6134(a)(1), Nov. 10, 1988, 102 Stat. 3350, 3721; Pub. L. 102–318, title V, §521(b)(28)–(30), July 3, 1992, 106 Stat. 312; Pub. L. 103–66, title XIII, §§13113(d)(5), 13237(a)(1), (c)(1), Aug. 10, 1993, 107 Stat. 430, 506, 508; Pub. L. 103–296, title III, §320(a)(1)(A), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 103–465, title VII, §733(a), Dec. 8, 1994, 108 Stat. 5006; Pub. L. 104–188, title I, §§1401(b)(10), 1954(b)(1), Aug. 20, 1996, 110 Stat. 1789, 1928; Pub. L. 105–206, title VI, §6023(10), July 22, 1998, 112 Stat. 825; Pub. L. 106–170, title V, §532(b)(2), Dec. 17, 1999, 113 Stat. 1930; Pub. L. 106–554, §1(a)(7) [title III, §319(11)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 108–357, title IV, §§409(a), 411(a)(1), Oct. 22, 2004, 118 Stat. 1500; Pub. L. 109–222, title V, §505(c)(2), May 17, 2006, 120 Stat. 356; Pub. L. 110–343, div. C, title II, §206(a), (b), Oct. 3, 2008, 122 Stat. 3865; Pub. L. 111–147, title V, §§502(b)(1), (2)(A), 541(a), Mar. 18, 2010, 124 Stat. 107, 115; Pub. L. 111–226, title II, §217(b), Aug. 10, 2010, 124 Stat. 2400; Pub. L. 111–312, title VII, §748(a), Dec. 17, 2010, 124 Stat. 3320; Pub. L. 111–325, title III, §§301(f), 302(b)(2), 308(b)(3), Dec. 22, 2010, 124 Stat. 3544, 3548, 3551.)

AMENDMENT OF SUBSECTION (h)

Pub. L. 111–147, title V, §502(b)(1), (2)(A), (f), Mar. 18, 2010, 124 Stat. 107, 108, provided that, applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, subsection (h) of this section is amended as follows:

(1) by amending paragraph (2) to read as follows:

''(2) Portfolio interest

''For purposes of this subsection, the term 'portfolio interest' means any interest (including original issue discount) which—

''(A) would be subject to tax under subsection (a) but for this subsection, and

''(B) is paid on an obligation—

''(i) which is in registered form, and

''(ii) with respect to which—

''(I) the United States person who would otherwise be required to deduct and withhold tax from such interest under section 1441(a) receives a statement (which meets the requirements of paragraph (5)) that the beneficial owner of the obligation is not a United States person, or

''(II) the Secretary has determined that such a statement is not required in order to carry out the purposes of this subsection.''; and

(2) in paragraph (3)(A), by striking ''subparagraph (A) or (B) of''.

REFERENCES IN TEXT

Section 207 of the Social Security Act, referred to in subsec. (a)(3)(A), is classified to section 407 of Title 42, The Public Health and Welfare.

Section 932(c), referred to in subsec. (a)(3), was repealed and a new section 932(c) of this title, which does not relate to taxation of social security benefits, was enacted by Pub. L. 99–514, title XII, §§1272(d)(1), 1274(a), Oct. 22, 1986, 100 Stat. 2594, 2596.

The Trade Act of 1974, referred to in subsec. (f)(2)(B), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Title V of the Trade Act of 1974 is classified generally to subchapter V (§2461 et seq.) of chapter 12 of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 2101 of Title 19 and Tables.

The date of the enactment of this subsection, referred to in subsec. (*l*)(1)(A)(i), (iii), (B)(iv)(I)(aa), is the date of enactment of Pub. L. 111–226, which was approved Aug. 10, 2010.

The date of the enactment of this subsection, referred to in subsec. (m)(3)(B), is the date of enactment of Pub. L. 111–147, which was approved Mar. 18, 2010.

AMENDMENTS

2010—Subsec. (i)(2)(B). Pub. L. 111–226, §217(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''A percentage of any dividend paid by a domestic corporation meeting the 80-percent foreign business requirements of section 861(c)(1) equal to the percentage determined for purposes of section 861(c)(2)(A).''

Subsec. (k)(1)(A). Pub. L. 111–325, §302(b)(2), inserted ''which meets the requirements of section 852(a) for the taxable year with respect to which the dividend is paid'' before period at end.

Subsec. (k)(1)(C). Pub. L. 111–325, §301(f)(1), substituted introductory provisions, cls. (i) to (iv), and cl. (v) heading and ''The term 'interest related dividend' shall not include any dividend with respect to'' for ''For purposes of this paragraph, the term 'interest-related dividend' means any dividend (or part thereof) which is designated by the regulated investment company as an interest-related dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified net interest income of the company for such taxable year, the portion of each distribution which shall be an interest-related dividend shall be only that portion of the amounts so designated which such qualified net interest income bears to the aggregate amount so designated. Such term shall not include any dividend with respect to''.

Pub. L. 111–312, §748(a), substituted ''December 31, 2011'' for ''December 31, 2009''.

Subsec. (k)(2)(A). Pub. L. 111–325, §302(b)(2), inserted ''which meets the requirements of section 852(a) for the taxable year with respect to which the dividend is paid'' before period at end.

Subsec. (k)(2)(C). Pub. L. 111–325, §301(f)(2), substituted introductory provisions, cls. (i) to (iv), and cl. (v) heading and ''The term 'short-term capital gain dividend' shall not include any dividend with respect to'' for ''For purposes of this paragraph, the term 'short-term capital gain dividend' means any dividend (or part thereof) which is designated by the regulated investment company as a short-term capital gain dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a tax-

able year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified short-term gain of the company for such taxable year, the portion of each distribution which shall be a short-term capital gain dividend shall be only that portion of the amounts so designated which such qualified short-term gain bears to the aggregate amount so designated. Such term shall not include any dividend with respect to''.

Pub. L. 111–312, §748(a), substituted ''December 31, 2011'' for ''December 31, 2009''.

Subsec. (k)(2)(D). Pub. L. 111–325, §308(b)(3), substituted ''For purposes of this subparagraph, the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain dividend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain.'' for ''For purposes of this subparagraph—

''(i) the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain dividend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain, and

''(ii) the excess of the net short-term capital gain for a taxable year over the net long-term capital loss for a taxable year (to which an election under section 4982(e)(4) does not apply) shall be determined without regard to any net capital loss or net short-term capital loss attributable to transactions after October 31 of such year, and any such net capital loss or net short-term capital loss shall be treated as arising on the 1st day of the next taxable year.

To the extent provided in regulations, clause (ii) shall apply also for purposes of computing the taxable income of the regulated investment company.''

Subsec. (*l*). Pub. L. 111–226, §217(b)(2), added subsec. (*l*). Former subsec. (*l*) redesignated (m).

Pub. L. 111–147, §541(a), added subsec. (*l*). Former subsec. (*l*) redesignated (m).

Subsec. (m). Pub. L. 111–226, §217(b)(2), redesignated subsec. (*l*) as (m). Former subsec. (m) redesignated (n).

Pub. L. 111–147, §541(a), redesignated subsec. (*l*) as (m).

Subsec. (n). Pub. L. 111–226, §217(b)(2), redesignated subsec. (m) as (n).

2008—Subsec. (k)(1)(C), (2)(C). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2006—Subsec. (k)(2)(E). Pub. L. 109–222 added subpar. (E).

2004—Subsec. (i)(2)(D). Pub. L. 108–357, §409(a), added subpar. (D).

Subsecs. (k), (*l*). Pub. L. 108–357, §411(a)(1), added subsec. (k) and redesignated former subsec. (k) as (*l*).

2000—Subsec. (f)(2)(B). Pub. L. 106–554 inserted opening parenthesis before ''19 U.S.C.''.

1999—Subsec. (h)(4)(C)(iv). Pub. L. 106–170 substituted ''to manage'' for ''to reduce''.

1998—Subsec. (f)(2)(B). Pub. L. 105–206 substituted ''19 U.S.C. 2461 et seq.)'' for ''(19 U.S.C. 2462)''.

1996—Subsec. (b)(1). Pub. L. 104–188, §1401(b)(10), substituted ''section 1 or 55'' for ''section 1, 55, or 402(d)(1)''.

Subsec. (f)(2)(B). Pub. L. 104–188, §1954(b)(1), substituted ''under title V'' for ''within the meaning of section 502''.

1994—Subsec. (a)(3)(A). Pub. L. 103–465 substituted ''85 percent'' for ''one-half''.

Subsec. (c). Pub. L. 103–296 substituted ''(J), (M), or (Q)'' for ''(J), or (M)'' in two places.

1993—Subsec. (a)(2). Pub. L. 103–66, §13113(d)(5), inserted ''such gains and losses shall be determined without regard to section 1202 and'' after ''except that'' in second sentence.

Subsec. (h)(2)(B)(ii). Pub. L. 103–66, §13237(c)(1), substituted ''paragraph (5)'' for ''paragraph (4)''.

Subsec. (h)(4) to (7). Pub. L. 103–66, §13237(a)(1), added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively.

1992—Subsec. (a)(1)(B). Pub. L. 102–318, §521(b)(28), struck out ''402(a)(2), 403(a)(2), or'' before ''631(b)''.

Subsec. (b)(1). Pub. L. 102–318, §521(b)(29), substituted ''402(d)(1)'' for ''402(e)(1)''.

Subsec. (k)(1). Pub. L. 102–318, §521(b)(30), substituted ''402(e)(2)'' for ''402(a)(4)''.

1988—Subsec. (c). Pub. L. 100–647, §1001(d)(2)(B), substituted ''the second sentence of section 1441(b)'' for ''section 1441(b)(1) or (2)'', and ''(F), (J), or (M)'' for ''(F) or (J)'' in two places.

Subsecs. (j), (k). Pub. L. 100–647, §6134(a)(1), added subsec. (j) and redesignated former subsec. (j) as (k).

1986—Subsec. (a)(1). Pub. L. 99–514, §1810(d)(3)(A), substituted ''subsection (h)'' for ''subsection (i)'' in introductory provisions.

Subsec. (a)(1)(C). Pub. L. 99–514, §1810(e)(2)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''in the case of—

''(i) a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and

''(ii) the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this clause only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by subparagraph (A) thereon), and''.

Subsec. (a)(1)(D). Pub. L. 99–514, §1211(b)(4), struck out ''or from payments which are treated as being so contingent under subsection (e),'' after ''sold or exchanged,''.

Subsec. (a)(2). Pub. L. 99–514, §301(b)(9), struck out ''such gains and losses shall be determined without regard to section 1202 (relating to deduction for capital gains) and'' after ''United States, except that''.

Subsec. (a)(3). Pub. L. 99–272 inserted at end ''For treatment of certain citizens of possessions of the United States, see section 932(c).''

Subsec. (e). Pub. L. 99–514, §1211(b)(5), struck out subsec. (e) which related to gains from sale or exchange of certain intangible property, par. (1) treating payments as contingent on use, etc., and par. (2) containing source rule.

Subsec. (h)(2). Pub. L. 99–514, §1810(d)(1)(A), (3)(B), inserted ''which would be subject to tax under subsection (a) but for this subsection and'' in introductory provisions and substituted ''receives a statement'' for ''has received a statement'' in subpar. (B)(ii).

Subsec. (h)(3)(C)(ii), (iii). Pub. L. 99–514, §1810(d)(2), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsecs. (i), (j). Pub. L. 99–514, §1214(c)(1), added subsec. (i) and redesignated former subsec. (i) as (j).

1984—Subsec. (a)(1). Pub. L. 98–369, §127(a)(2), substituted ''Except as provided in subsection (i), there'' for ''There''.

Subsec. (a)(1)(A). Pub. L. 98–369, §42(a)(9), substituted ''section 1273'' for ''section 1232(b)''.

Subsec. (a)(1)(C). Pub. L. 98–369, §128(a)(1), amended subpar. (C) generally, substituting in cl. (i), ''a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and'' for ''bonds or other evidences of indebtedness issued after September 28, 1965, and before April 1, 1972, amounts which under section 1232(a)(2)(B) are considered as ordinary income, and, in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact the obligations were issued after May 27, 1969,'', substituting in cl. (ii), ''the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest

thereon (except that such original issue discount shall be taken into account under this clause only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by subparagraph (A) thereon), and'' for ''bonds or other evidences of indebtedness issued after March 31, 1972, and payable more than 6 months from the date of original issue (without regard to the period held by the taxpayer), amounts which under section 1232(a)(2)(B) would be considered as ordinary income but for the fact such obligations were issued after May 27, 1969, and'', and striking out cl. (iii) which required that in the case of the payment of interest on an obligation described in cl. (ii), an amount equal to the original issue discount, but not in excess of such interest less the tax imposed by subpar. (A) thereon, accrued on such obligation since the last payment of interest thereon, be included for purpose of the 30 percent tax.

Subsec. (g). Pub. L. 98–369, §128(a)(2), added subsec. (g). Former subsec. (g), relating to cross references, redesignated (h).

Subsec. (g)(6) to (8). Pub. L. 98–369, §412(b)(1), amended subsec. (g), relating to cross references, by striking out par. (6) referring to section 6015(j) for the requirement of making a declaration of estimated tax by certain nonresident alien individuals and redesignating pars. (7) and (8) as (6) and (7), respectively.

Subsec. (h). Pub. L. 98–369, §127(a), added subsec. (h). Former subsec. (h), relating to cross references, redesignated (i).

Pub. L. 98–369, §128(a)(2), redesignated subsec. (g), relating to cross references, as (h).

Subsec. (i). Pub. L. 98–369, §127(a)(1), redesignated subsec. (h), relating to cross references, as (i).

1983—Subsec. (a)(3). Pub. L. 98–21, §121(c)(1), added par. (3).

Subsec. (a)(3)(A). Pub. L. 98–21, §335(b)(2)(B), inserted ''(notwithstanding section 207 of the Social Security Act)'' after ''income''.

1981—Subsec. (g)(6). Pub. L. 97–34 substituted ''6015(j)'' for ''6015(i)''.

1980—Subsec. (b)(1). Pub. L. 96–222 substituted ''55'' for ''section 55''.

Subsec. (f). Pub. L. 96–605 designated existing provision as par. (1), inserted heading ''In general'' and redesignated par. (1) as subpar. (A), cls. (A) and (B) of subpar. (A) as so redesignated as cls. (i) and (ii), and par. (2) as subpar. (B), and added par. (2).

Subsec. (g)(8). Pub. L. 96–499 added par. (8).

1978—Subsec. (b)(1). Pub. L. 95–600, §§401(b)(3), 421(e)(4), substituted ''section 1, section 55, or 402(e)(1)'' for ''section 1, 402(e)(1), or 1201(b)''.

1976—Subsec. (a)(1)(C)(i), (ii). Pub. L. 94–455, §1901(b)(3)(I), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is not a capital asset''.

Subsec. (d). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'', each time appearing.

Subsec. (g)(7). Pub. L. 94–455, §1012(a)(2), added par. (7).

1974—Subsec. (b)(1). Pub. L. 93–406 inserted reference to section 402(e)(1).

1971—Subsec. (a)(1)(A). Pub. L. 92–178, §313(a), inserted ''(other than original issue discount as defined in section 1232(b))'' after ''interest''.

Subsec. (a)(1)(C). Pub. L. 92–178, §313(b), designated existing provisions as cl. (i), inserted ''and before April 1, 1972,'' after ''September 28, 1965,'', substituted ''section 1232(a)(2)(B)'' for ''section 1232'', and inserted '', in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact the obligations were issued after May 27, 1969,'', and added cls. (ii) and (iii).

1966—Subsecs. (a), (b). Pub. L. 89–809 consolidated the substance of former subsecs. (a) to (c) and, as part of the consolidation, revised the overall income tax treatment of nonresident alien individuals by substituting provisions dividing their income for tax purposes into two basic groups according to whether or not the income is effectively connected with a United States trade or business for provisions calling for different tax treatment based upon whether or not they are, or are not, engaged in a trade or business in the United States, with a further breakdown of those not engaged in trade or business in the United States as to whether their income is over or under $21,200.

Subsec. (c). Pub. L. 89–809 redesignated subsec. (d) as (c) and inserted provisions that any income described in section 1441(b)(1) or (2) which is received by such individual shall, to the extent derived from sources within the United States, be treated as effectively connected with the conduct of a trade or business within the United States. Substance of former subsec. (c) revised and incorporated into subsecs. (a) and (b).

Subsecs. (d) to (f). Pub. L. 89–809 added subsecs. (d) to (f) and redesignated former subsecs. (d) and (e) as (c) and (g), respectively.

Subsec. (g). Pub. L. 89–809 redesignated former subsec. (e) as (g), added pars. (2) and (4) to (6), and redesignated former pars. (1) and (2) as (3) and (1), respectively.

1964—Subsec. (a). Pub. L. 88–272, §113(b)(2), substituted ''30 percent tax'' for ''and gross income of not more than $15,400'' in heading.

Subsec. (b). Pub. L. 88–272, §§113(b)(1), (3), 201(d)(12), substituted ''$19,000 in the case of a taxable year beginning in 1964 or more than $21,200 in the case of a taxable year beginning after 1964'' for ''$15,400'', ''the credit under section 35'' for ''the sum of the credits under sections 34 and 35'' in text, and ''Regular tax'' for ''and gross income of more than $15,400'' in heading.

1961—Subsecs. (d), (e). Pub. L. 87–256 added subsec. (d) and redesignated former subsec. (d) as (e).

1960—Subsec. (d). Pub. L. 86–437 substituted ''Cross references'' for ''Doubling of tax'' in heading, and inserted cross reference to section 402(a)(4).

1958—Subsec. (a)(1). Pub. L. 85–866, §40(a), inserted ''section 403(a)(2),'' after ''section 402(a)(2),''.

Subsec. (b). Pub. L. 85–866, §41(a), inserted last par. covering former provisions of par. (3), which was struck out by the amendment, and containing new provisions with references to credits under section 34 and 35 and exclusion under section 116 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 301(f) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 301(h) of Pub. L. 111–325, set out as a note under section 852 of this title.

Amendment by section 302(b)(2) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 302(c) of Pub. L. 111–325, set out as a note under section 852 of this title.

Amendment by section 308(b)(3) of Pub. L. 111–325 applicable to taxable years beginning after Dec. 22, 2010, see section 308(c) of Pub. L. 111–325, set out as a note under section 852 of this title.

Pub. L. 111–312, title VII, §748(b), Dec. 17, 2010, 124 Stat. 3320, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

Amendment by Pub. L. 111–226 applicable to taxable years beginning after Dec. 31, 2010, with certain exceptions, see section 217(d) of Pub. L. 111–226, set out as a note under section 861 of this title.

Amendment by section 502(b)(1), (2)(A) of Pub. L. 111–147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111–147, set out as a note under section 149 of this title.

Pub. L. 111–147, title V, §541(b), Mar. 18, 2010, 124 Stat. 117, provided that: ''The amendments made by this section [amending this section] shall apply to payments made on or after the date that is 180 days after the date of the enactment of this Act [Mar. 18, 2010].''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §206(c), Oct. 3, 2008, 122 Stat. 3865, provided that: ''The amendments made by

this section [amending this section] shall apply to dividends with respect to taxable years of regulated investment companies beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–222 applicable to taxable years of qualified investment entities beginning after December 31, 2005, except that no amount shall be required to be withheld under section 1441, 1442, or 1445 of the Internal Revenue Code of 1986 with respect to any distribution before May 17, 2006 if such amount was not otherwise required to be withheld under any such section as in effect before such amendments, see section 505(d) of Pub. L. 109–222, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, § 409(b), Oct. 22, 2004, 118 Stat. 1500, provided that: ''The amendment made by this section [amending this section] shall apply to payments made after December 31, 2004.''

Pub. L. 108–357, title IV, § 411(d), Oct. 22, 2004, 118 Stat. 1505, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 881, 897, 1441, 1442, and 2105 of this title] shall apply to dividends with respect to taxable years of regulated investment companies beginning after December 31, 2004.

''(2) ESTATE TAX TREATMENT.—The amendment made by subsection (b) [amending section 2105 of this title] shall apply to estates of decedents dying after December 31, 2004.

''(3) CERTAIN OTHER PROVISIONS.—The amendments made by subsection (c) [amending section 897 of this title] (other than paragraph (1) thereof) shall take effect after December 31, 2004.''

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(10) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Amendment by section 1954(b)(1) of Pub. L. 104–188 applicable to articles entered on or after Oct. 1, 1996, with provisions relating to retroactive application, see section 1953 of Pub. L. 104–188, set out as an Effective Date note under section 2461 of Title 19, Customs Duties.

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 733(b) of Pub. L. 103–465 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to benefits paid after December 31, 1994, in taxable years ending after such date.''

Section 320(c) of Pub. L. 103–296 provided that: ''The amendments made by this subsection [probably means this section, which amended this section, sections 872, 1441, 3121, 3231, 3306, and 7701 of this title, and section 410 of Title 42, The Public Health and Welfare] shall take effect with the calendar quarter following the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13113(d)(5) of Pub. L. 103–66 applicable to stock issued after Aug. 10, 1993, see section 13113(e) of Pub. L. 103–66, set out as a note under section 53 of this title.

Section 13237(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 881, 1441, 1442, and 2105 of this title] shall apply to interest received after December 31, 1993; except that the amendments made by subsection (b) [amending section 2105 of this title] shall apply to the estates of decedents dying after December 31, 1993.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(d)(2)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6134(b) of Pub. L. 100–647 provided that: ''The amendments made by subsection (a) [amending this section and section 1441 of this title] shall take effect on the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 301(b)(9) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 301(c) of Pub. L. 99–514, set out as a note under section 62 of this title.

Amendment by section 1211(b)(4), (5) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Amendment by section 1214(c)(1) of Pub. L. 99–514 applicable to payments made in taxable year of payor beginning after Dec. 31, 1986, except as otherwise provided, see section 1214(d) of Pub. L. 99–514, as amended, set out as a note under section 861 of this title.

Amendment by section 1810(d)(1)(A), (2), (3)(A), (B), (e)(2)(A) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 12103(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and section 932 of this title] shall apply to benefits received after December 31, 1983, in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(9) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Section 127(g) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VI, § 6128(a), Nov. 10, 1988, 102 Stat. 3716, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 163, 864, 881, 1441, 1442, and 2105 of this title] shall apply to interest received after the date of the enactment of this Act [July 18, 1984] with respect to obligations issued after such date, in taxable years ending after such date.

''(2) SUBSECTION (d).—The amendment made by subsection (d) [amending section 2105 of this title] shall apply to obligations issued after the date of the enactment of this Act [July 18, 1984] with respect to the estates of decedents dying after such date.

''(3) SPECIAL RULE FOR CERTAIN UNITED STATES AFFILIATE OBLIGATIONS.—

''(A) IN GENERAL.—For purposes of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], payments of interest on a United States affiliate obligation to an applicable CFC in existence on or before June 22, 1984, shall be treated as payments to a resident of the country in which the applicable CFC is incorporated.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to any applicable CFC which did not meet requirements which are based on the principles set forth in Revenue Rulings 69–501, 69–377, 70–645, and 73–110 as such principles are applied in Revenue Ruling 86–6, except that the maximum debt-to-equity ratio described in such Revenue Rulings shall be increased from 5-to-1 to 25-to-1.

''(C) DEFINITIONS.—

''(i) The term 'applicable CFC' has the meaning given such term by section 121(b)(2)(D) of this Act [set out as a note under section 904 of this title], except that such section shall be applied by substituting 'the date of interest payment' for 'March 31, 1984,' in clause (i) thereof.

''(ii) The term 'United States affiliate obligation' means an obligation described in section 121(b)(2)(F) of this Act [set out as a note under section 904 of this title] which was issued before June 22, 1984.''

[Section 6128(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending section 127(g) of Pub. L. 98–369, set out above] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 10, 1988].'']

Section 128(d) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 163 and 881 of this title] shall apply to payments made on or after the 60th day after the date of the enactment of this Act [July 18, 1984] with respect to obligations issued after March 31, 1972.

''(2) SUBSECTION (c).—The amendment made by subsection (c) [amending section 163 of this title] shall apply to obligations issued after June 9, 1984.''

Amendment by section 412(b)(1) of Pub. L. 98–369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98–369, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 121(c)(1) of Pub. L. 98–21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as an Effective Date note under section 86 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 725(d) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section and sections 6015, 6153, 6654, and 7701 of this title] shall apply to estimated tax for taxable years beginning after December 31, 1980.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 227(b) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts received after July 1, 1979.''

Amendment by Pub. L. 96–499 applicable to dispositions after June 18, 1980, see section 1125(a) of Pub. L. 96–499, set out as an Effective Date note under section 897 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 401(b)(3) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 401(c) of Pub. L. 95–600, set out as a note under section 1201 of this title.

Amendment by section 421(e)(4) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1012(a)(2) of Pub. L. 94–455 applicable to taxable years ending on or after Dec. 31, 1975, see section 1012(d) of Pub. L. 94–455, set out as a note under section 6013 of this title.

Amendment by section 1901(b)(3)(I) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 313(f) of Pub. L. 92–178, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments to section 871 and 881 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made by this section shall apply with respect to taxable years beginning after December 31, 1966. The amendments to sections 1441 and 1442 of such Code made by this section shall apply with respect to payments occurring on or after April 1, 1972.''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 103(n) of Pub. L. 89–809 provided that:

''(1) The amendments made by this section (other than the amendments made by subsections (h), (i), and (k)) [amending this section and sections 1, 116, 154, 872 to 874, 875, 932, 6015, and 7701 of this title, redesignating section 877 as 878, enacting section 877 of this title, and repealing section 1493 of this title] shall apply with respect to taxable years beginning after December 31, 1966.

''(2) The amendments made by subsection (h) [amending section 1441 of this title] shall apply with respect to payments made in taxable years of recipients beginning after December 31, 1966.

''(3) The amendments made by subsection (i) [amending section 1461 of this title] shall apply with respect to payments occurring after December 31, 1966.

''(4) The amendments made by subsection (k) [amending section 3401 of this title] shall apply with respect to remuneration paid after December 31, 1966.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 113(b)(1) of Pub. L. 88–272 effective, except for purposes of section 21 of this title, with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88–272, set out as a note under section 1 of this title.

Amendment by section 201(d)(12) of Pub. L. 88–272 applicable with respect to dividends received after Dec. 31, 1964, in taxable years ending after such date, see section 201(e) of Pub. L. 88–272, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–256 applicable to taxable years beginning after Dec. 31, 1961, see section 110(h)(1) of Pub. L. 87–256, set out as a note under section 117 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–437 applicable only with respect to taxable years beginning after Dec. 31, 1959, see section 3 of Pub. L. 86–437, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 40(c) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply only with respect to taxable years ending after the date of the enactment of this Act [Sept. 2, 1958]. The amendments made by subsection (b) [amending section 1441 of this title] shall take effect on the day following the date of the enactment of this Act [Sept. 2, 1958].''

Section 41(c) of Pub. L. 85–866 provided that: ''The amendments made by this section [amending this section and section 35 of this title] shall apply only with respect to taxable years beginning after December 31, 1957.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 1211(b)(4), (5) and 1214(c)(1) of Pub. L. 99–514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 872. Gross income

(a) General rule

In the case of a nonresident alien individual, except where the context clearly indicates otherwise, gross income includes only—

(1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and

(2) gross income which is effectively connected with the conduct of a trade or business within the United States.

(b) Exclusions

The following items shall not be included in gross income of a nonresident alien individual, and shall be exempt from taxation under this subtitle:

(1) Ships operated by certain nonresidents

Gross income derived by an individual resident of a foreign country from the international operation of a ship or ships if such foreign country grants an equivalent exemption to individual residents of the United States.

(2) Aircraft operated by certain nonresidents

Gross income derived by an individual resident of a foreign country from the international operation of aircraft if such foreign country grants an equivalent exemption to individual residents of the United States.

(3) Compensation of participants in certain exchange or training programs

Compensation paid by a foreign employer to a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended. For purposes of this paragraph, the term ''foreign employer'' means—

(A) a nonresident alien individual, foreign partnership, or foreign corporation, or

(B) an office or place of business maintained in a foreign country or in a possession of the United States by a domestic corporation, a domestic partnership, or an individual who is a citizen or resident of the United States.

(4) Certain bond income of residents of the Ryukyu Islands or the Trust Territory of the Pacific Islands

Income derived by a nonresident alien individual from a series E or series H United States savings bond, if such individual acquired such bond while a resident of the Ryukyu Islands or the Trust Territory of the Pacific Islands.

(5) Income derived from wagering transactions in certain parimutuel pools

Gross income derived by a nonresident alien individual from a legal wagering transaction initiated outside the United States in a parimutuel pool with respect to a live horse race or dog race in the United States.

(6) Certain rental income

Income to which paragraphs (1) and (2) apply shall include income which is derived from the rental on a full or bareboat basis of a ship or ships or aircraft, as the case may be.

(7) Application to different types of transportation

The Secretary may provide that this subsection be applied separately with respect to income from different types of transportation.

(8) Treatment of possessions

To the extent provided in regulations, a possession of the United States shall be treated as a foreign country for purposes of this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 280; Pub. L. 87–256, § 110(c), Sept. 21, 1961, 75 Stat. 536; Pub. L. 89–809, title I, § 103(b), Nov. 13, 1966, 80 Stat. 1550; Pub. L. 99–514, title XII, § 1212(c)(1), (2), Oct. 22,

1986, 100 Stat. 2538; Pub. L. 100–647, title I, § 1012(e)(2)(B), (5), (s)(2)(A), Nov. 10, 1988, 102 Stat. 3500, 3527; Pub. L. 101–239, title VII, § 7811(i)(8)(C), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 103–296, title III, § 320(a)(2), Aug. 15, 1994, 108 Stat. 1535; Pub. L. 108–357, title IV, § 419(a), Oct. 22, 2004, 118 Stat. 1513.)

REFERENCES IN TEXT

Section 101 of the Immigration and Nationality Act, referred to in subsec. (b)(3), is classified to section 1101 of Title 8, Aliens and Nationality.

AMENDMENTS

2004—Subsec. (b)(5) to (8). Pub. L. 108–357 added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

1994—Subsec. (b)(3). Pub. L. 103–296 substituted ''(F), (J), or (Q)'' for ''(F) or (J)''.

1989—Subsec. (b)(7). Pub. L. 101–239 added par. (7).

1988—Subsec. (a). Pub. L. 100–647, § 1012(s)(2)(A), inserted '', except where the context clearly indicates otherwise'' after ''individual''.

Subsec. (b)(1), (2). Pub. L. 100–647, § 1012(e)(2)(B), (5), substituted ''to individual residents of the United States'' for ''to citizens of the United States and to corporations organized in the United States'' and ''international operation'' for ''operation''.

1986—Subsec. (b)(1). Pub. L. 99–514, § 1212(c)(1), added par. (1) and struck out former par. (1), ships under foreign flag, which read as follows: ''Earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.''

Subsec. (b)(2). Pub. L. 99–514, § 1212(c)(1), added par. (2) and struck out former par. (2), aircraft of foreign registry, which read as follows: ''Earnings derived from the operation of aircraft registered under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.''

Subsec. (b)(5), (6). Pub. L. 99–514, § 1212(c)(2), added pars. (5) and (6).

1966—Subsec. (a). Pub. L. 89–809, § 103(b)(1), limited the inclusion of gross income which is derived from sources within the United States to such income which is not effectively connected with the conduct of a trade or business within the United States and inserted provision including gross income without the limitation as to source which is effectively connected with the conduct of a trade or business within the United States.

Subsec. (b)(3)(B). Pub. L. 89–809, § 103(b)(2), substituted ''by a domestic corporation, a domestic partnership, or an individual who is a citizen or resident of the United States'' for ''by a domestic corporation''.

Subsec. (b)(4). Pub. L. 89–809, § 102(b)(3), added par. (4).

1961—Subsec. (b)(3). Pub. L. 87–256 added par. (3).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, § 419(c), Oct. 22, 2004, 118 Stat. 1513, provided that: ''The amendments made by this section [amending this section and section 883 of this title] shall apply to wagers made after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103–296, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1212(f) of Pub. L. 99–514, set out as a note under section 863 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–256 applicable to taxable years beginning after Dec. 31, 1961, see section 110(h)(1) of Pub. L. 87–256, set out as a note under section 117 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1212(c)(1), (2) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 873. Deductions

(a) General rule

In the case of a nonresident alien individual, the deductions shall be allowed only for purposes of section 871(b) and (except as provided by subsection (b)) only if and to the extent that they are connected with income which is effectively connected with the conduct of a trade or business within the United States; and the proper apportionment and allocation of the deductions for this purpose shall be determined as provided in regulations prescribed by the Secretary.

(b) Exceptions

The following deductions shall be allowed whether or not they are connected with income which is effectively connected with the conduct of a trade or business within the United States:

(1) Losses

The deduction allowed by section 165 for casualty or theft losses described in paragraph (2) or (3) of section 165(c), but only if the loss is of property located within the United States.

(2) Charitable contributions

The deduction for charitable contributions and gifts allowed by section 170.

(3) Personal exemption

The deduction for personal exemptions allowed by section 151, except that only one ex-

emption shall be allowed under section 151 unless the taxpayer is a resident of a contiguous country or is a national of the United States.

(c) Cross reference

For rule that certain foreign taxes are not to be taken into account in determining deduction or credit, see section 906(b)(1).

(Aug. 16, 1954, ch. 736, 68A Stat. 280; Pub. L. 89–809, title I, § 103(c)(1), Nov. 13, 1966, 80 Stat. 1550; Pub. L. 92–580, § 1(b), Oct. 27, 1972, 86 Stat. 1276; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–30, title I, § 101(d)(11), May 23, 1977, 91 Stat. 134; Pub. L. 98–369, div. A, title VII, § 711(c)(2)(A)(iv), July 18, 1984, 98 Stat. 945; Pub. L. 105–277, div. J, title IV, § 4004(b)(3), Oct. 21, 1998, 112 Stat. 2681–911.)

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105–277 amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''The deduction for losses allowed by section 165(c)(3), but only if the loss is of property located within the United States.''

1984—Subsec. (b)(1). Pub. L. 98–369 substituted ''for losses'' for '', for losses of property not connected with the trade or business if arising from certain casualties or theft,''.

1977—Subsec. (c). Pub. L. 95–30 struck out par. (1) which made a cross reference to section 142(b)(1) for disallowance of the standard deduction and struck out ''(2)'' at beginning of single remaining cross reference.

1976—Subsec. (a). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1972—Subsec. (b)(3). Pub. L. 92–580 substituted exception that only one exemption be allowed under section 151 unless the taxpayer is a resident of a contiguous country or is a national of the United States, for exception that in the case of a non-resident alien individual who is not a resident of a contiguous country only one exception be allowed under section 151.

1966—Pub. L. 89–809 amended section generally, substituting ''connected with income which is effectively connected with the conduct of a trade or business within the United States'' for ''connected with income from sources within the United States'' in subsec. (a), striking out provisions relating to the deduction of losses not connected with a trade or business but incurred in transactions entered into for profit in subsec. (b), making the casualty loss deduction available even if the property giving rise to the loss is not effectively connected with the conduct of a trade or business in the United States if the property is located in this country, making the charitable contribution deduction available even though not related to the trade or business, and adding subsec. (c)(2) making a cross reference to section 906(b)(1) for rule that certain foreign taxes are not to be taken into account in determining deduction or credit.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 applicable to taxable years beginning after Dec. 31, 1983, see section 4004(c)(1) of Pub. L. 105–277, set out as a note under section 172 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 711(c)(2)(A)(v) of Pub. L. 98–369, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–580 applicable to taxable years beginning after Dec. 31, 1971, see section 1(c) of Pub. L. 92–580, set out as a note under section 152 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

§ 874. Allowance of deductions and credits

(a) Return prerequisite to allowance

A nonresident alien individual shall receive the benefit of the deductions and credits allowed to him in this subtitle only by filing or causing to be filed with the Secretary a true and accurate return, in the manner prescribed in subtitle F (sec. 6001 and following, relating to procedure and administration), including therein all the information which the Secretary may deem necessary for the calculation of such deductions and credits. This subsection shall not be construed to deny the credits provided by sections 31 and 33 for tax withheld at source or the credit provided by section 34 for certain uses of gasoline and special fuels.

(b) Tax withheld at source

The benefit of the deduction for exemptions under section 151 may, in the discretion of the Secretary, and under regulations prescribed by the Secretary, be received by a non-resident alien individual entitled thereto, by filing a claim therefor with the withholding agent.

(c) Foreign tax credit

Except as provided in section 906, a nonresident alien individual shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(Aug. 16, 1954, ch. 736, 68A Stat. 281; Pub. L. 89–44, title VIII, § 809(d)(3), June 21, 1965, 79 Stat. 167; Pub. L. 89–809, title I, §§ 103(d), 106(a)(3), Nov. 13, 1966, 80 Stat. 1551, 1569; Pub. L. 91–258, title II, § 207(d)(1), May 21, 1970, 84 Stat. 248; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–424, title V, § 515(b)(6)(E), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title IV, § 474(r)(19), July 18, 1984, 98 Stat. 843.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369 substituted reference to section ''33'' for ''32'' and ''34'' for ''39''.

1983—Subsec. (a). Pub. L. 97–424 substituted ''and special fuels'' for '', special fuels, and lubricating oil''.

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1970—Subsec. (a). Pub. L. 91–258 included provision against construction of subsec. (a) to deny credit provided by section 39 for certain uses of special fuels.

1966—Subsec. (a). Pub. L. 89–809, § 103(d), struck out ''of his total income received from all sources in the United States'' after ''true and accurate return''.

Subsec. (c). Pub. L. 89–809, § 106(a)(3), substituted ''Foreign tax credit'' for ''Foreign tax credit not allowed'' in heading and inserted reference to an exception provided in section 906.

1965—Subsec. (a). Pub. L. 89–44 inserted ''or the credit provided by section 39 for certain uses of gasoline and lubricating oil''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–258 effective July 1, 1970, see section 211(a) of Pub. L. 91–258, set out as a note under section 4041 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by section 103(d) of Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

Section 106(a)(6) of Pub. L. 89–809, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this subsection [enacting section 906 of this title and amending this section and section 901 of this title] shall apply with respect to taxable years beginning after Dec. 31, 1966. In applying section 904 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to section 906 of such Code, no amount may be carried from or to any taxable year beginning before Jan. 1, 1967, and no such year shall be taken into account.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–44 applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89–44, set out as a note under section 6420 of this title.

§ 875. Partnerships; beneficiaries of estates and trusts

For purposes of this subtitle—

(1) a nonresident alien individual or foreign corporation shall be considered as being engaged in a trade or business within the United States if the partnership of which such individual or corporation is a member is so engaged, and

(2) a nonresident alien individual or foreign corporation which is a beneficiary of an estate or trust which is engaged in any trade or business within the United States shall be treated as being engaged in such trade or business within the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 281; Pub. L. 89–809, title I, § 103(e)(1), Nov. 13, 1966, 80 Stat. 1551.)

AMENDMENTS

1966—Pub. L. 89–809 designated existing provisions as par. (1), substituted reference to nonresident alien individuals or foreign corporations for reference simply to nonresident alien individuals, and added par. (2).

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as a note under section 871 of this title.

§ 876. Alien residents of Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands

(a) General rule

This subpart shall not apply to any alien individual who is a bona fide resident of Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands during the entire taxable year and such alien shall be subject to the tax imposed by section 1.

(b) Cross references

For exclusion from gross income of income derived from sources within—

(1) Guam, American Samoa, and the Northern Mariana Islands, see section 931, and

(2) Puerto Rico, see section 933.

(Aug. 16, 1954, ch. 736, 68A Stat. 281; Pub. L. 99–514, title XII, § 1272(b), Oct. 22, 1986, 100 Stat. 2593.)

AMENDMENTS

1986—Pub. L. 99–514, § 1272(b), inserted '', Guam, American Samoa, or the Northern Mariana Islands'' in section catchline.

Subsec. (a). Pub. L. 99–514, § 1272(b), amended subsec. (a) generally, substituting ''General rule'' for ''No application to certain alien residents of Puerto Rico'' in heading and inserting references to residents of Guam, American Samoa, and the Northern Mariana Islands in text.

Subsec. (b). Pub. L. 99–514, § 1272(b), amended subsec. (b) generally, inserting references to Guam, American Samoa, and the Northern Mariana Islands.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

§ 877. Expatriation to avoid tax

(a) Treatment of expatriates

(1) In general

Every nonresident alien individual to whom this section applies and who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection (after any reduction in such tax under the last sentence of such subsection) exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

(2) Individuals subject to this section

This section shall apply to any individual if—

(A) the average annual net income tax (as defined in section 38(c)(1)) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $124,000,

(B) the net worth of the individual as of such date is $2,000,000 or more, or

(C) such individual fails to certify under penalty of perjury that he has met the requirements of this title for the 5 preceding taxable years or fails to submit such evidence of such compliance as the Secretary may require.

In the case of the loss of United States citizenship in any calendar year after 2004, such $124,000 amount shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ''2003'' for ''1992'' in subparagraph (B) thereof. Any increase under the preceding sentence shall be rounded to the nearest multiple of $1,000.

(b) Alternative tax

A nonresident alien individual described in subsection (a) shall be taxable for the taxable year as provided in section 1 or 55, except that—

(1) the gross income shall include only the gross income described in section 872(a) (as modified by subsection (d) of this section), and

(2) the deductions shall be allowed if and to the extent that they are connected with the gross income included under this section, except that the capital loss carryover provided by section 1212(b) shall not be allowed; and the proper allocation and apportionment of the deductions for this purpose shall be determined as provided under regulations prescribed by the Secretary.

For purposes of paragraph (2), the deductions allowed by section 873(b) shall be allowed; and the deduction (for losses not connected with the trade or business if incurred in transactions entered into for profit) allowed by section 165(c)(2) shall be allowed, but only if the profit, if such transaction had resulted in a profit, would be included in gross income under this section. The tax imposed solely by reason of this section shall be reduced (but not below zero) by the amount of any income, war profits, and excess profits taxes (within the meaning of section 903) paid to any foreign country or possession of the United States on any income of the taxpayer on which tax is imposed solely by reason of this section.

(c) Exceptions

(1) In general

Subparagraphs (A) and (B) of subsection (a)(2) shall not apply to an individual described in paragraph (2) or (3).

(2) Dual citizens

(A) In general

An individual is described in this paragraph if—

(i) the individual became at birth a citizen of the United States and a citizen of another country and continues to be a citizen of such other country, and

(ii) the individual has had no substantial contacts with the United States.

(B) Substantial contacts

An individual shall be treated as having no substantial contacts with the United States only if the individual—

(i) was never a resident of the United States (as defined in section 7701(b)),

(ii) has never held a United States passport, and

(iii) was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.

(3) Certain minors

An individual is described in this paragraph if—

(A) the individual became at birth a citizen of the United States,

(B) neither parent of such individual was a citizen of the United States at the time of such birth,

(C) the individual's loss of United States citizenship occurs before such individual attains age 18½, and

(D) the individual was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.

(d) Special rules for source, etc.

For purposes of subsection (b)—

(1) Source rules

The following items of gross income shall be treated as income from sources within the United States:

(A) Sale of property

Gains on the sale or exchange of property (other than stock or debt obligations) located in the United States.

(B) Stock or debt obligations

Gains on the sale or exchange of stock issued by a domestic corporation or debt obligations of United States persons or of the United States, a State or political subdivision thereof, or the District of Columbia.

(C) Income or gain derived from controlled foreign corporation

Any income or gain derived from stock in a foreign corporation but only—

(i) if the individual losing United States citizenship owned (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958(b)), at any time during the 2-year period ending on the date of the loss of United States citizenship, more than 50 percent of—

(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

(II) the total value of the stock of such corporation, and

(ii) to the extent such income or gain does not exceed the earnings and profits attributable to such stock which were earned or accumulated before the loss of citizenship and during periods that the ownership requirements of clause (i) are met.

(2) Gain recognition on certain exchanges

(A) In general

In the case of any exchange of property to which this paragraph applies, notwithstanding any other provision of this title, such property shall be treated as sold for its fair market value on the date of such exchange,

and any gain shall be recognized for the taxable year which includes such date.

(B) Exchanges to which paragraph applies

This paragraph shall apply to any exchange during the 10-year period beginning on the date the individual loses United States citizenship if—

(i) gain would not (but for this paragraph) be recognized on such exchange in whole or in part for purposes of this subtitle,

(ii) income derived from such property was from sources within the United States (or, if no income was so derived, would have been from such sources), and

(iii) income derived from the property acquired in the exchange would be from sources outside the United States.

(C) Exception

Subparagraph (A) shall not apply if the individual enters into an agreement with the Secretary which specifies that any income or gain derived from the property acquired in the exchange (or any other property which has a basis determined in whole or part by reference to such property) during such 10-year period shall be treated as from sources within the United States. If the property transferred in the exchange is disposed of by the person acquiring such property, such agreement shall terminate and any gain which was not recognized by reason of such agreement shall be recognized as of the date of such disposition.

(D) Secretary may extend period

To the extent provided in regulations prescribed by the Secretary, subparagraph (B) shall be applied by substituting the 15-year period beginning 5 years before the loss of United States citizenship for the 10-year period referred to therein. In the case of any exchange occurring during such 5 years, any gain recognized under this subparagraph shall be recognized immediately after such loss of citizenship.

(E) Secretary may require recognition of gain in certain cases

To the extent provided in regulations prescribed by the Secretary—

(i) the removal of appreciated tangible personal property from the United States, and

(ii) any other occurrence which (without recognition of gain) results in a change in the source of the income or gain from property from sources within the United States to sources outside the United States,

shall be treated as an exchange to which this paragraph applies.

(3) Substantial diminishing of risks of ownership

For purposes of determining whether this section applies to any gain on the sale or exchange of any property, the running of the 10-year period described in subsection (a) and the period applicable under paragraph (2) shall be suspended for any period during which the individual's risk of loss with respect to the property is substantially diminished by—

(A) the holding of a put with respect to such property (or similar property),

(B) the holding by another person of a right to acquire the property, or

(C) a short sale or any other transaction.

(4) Treatment of property contributed to controlled foreign corporations

(A) In general

If—

(i) an individual losing United States citizenship contributes property during the 10-year period beginning on the date the individual loses United States citizenship to any corporation which, at the time of the contribution, is described in subparagraph (B), and

(ii) income derived from such property immediately before such contribution was from sources within the United States (or, if no income was so derived, would have been from such sources),

any income or gain on such property (or any other property which has a basis determined in whole or part by reference to such property) received or accrued by the corporation shall be treated as received or accrued directly by such individual and not by such corporation. The preceding sentence shall not apply to the extent the property has been treated under subparagraph (C) as having been sold by such corporation.

(B) Corporation described

A corporation is described in this subparagraph with respect to an individual if, were such individual a United States citizen—

(i) such corporation would be a controlled foreign corporation (as defined in[1] 957), and

(ii) such individual would be a United States shareholder (as defined in section 951(b)) with respect to such corporation.

(C) Disposition of stock in corporation

If stock in the corporation referred to in subparagraph (A) (or any other stock which has a basis determined in whole or part by reference to such stock) is disposed of during the 10-year period referred to in subsection (a) and while the property referred to in subparagraph (A) is held by such corporation, a pro rata share of such property (determined on the basis of the value of such stock) shall be treated as sold by the corporation immediately before such disposition.

(D) Anti-abuse rules

The Secretary shall prescribe such regulations as may be necessary to prevent the avoidance of the purposes of this paragraph, including where—

(i) the property is sold to the corporation, and

(ii) the property taken into account under subparagraph (A) is sold by the corporation.

[1] So in original. Probably should be followed by ''section''.

(E) Information reporting

The Secretary shall require such information reporting as is necessary to carry out the purposes of this paragraph.

(e) Comparable treatment of lawful permanent residents who cease to be taxed as residents

(1) In general

Any long-term resident of the United States who ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)) shall be treated for purposes of this section and sections 2107, 2501, and 6039G in the same manner as if such resident were a citizen of the United States who lost United States citizenship on the date of such cessation or commencement.

(2) Long-term resident

For purposes of this subsection, the term ''long-term resident'' means any individual (other than a citizen of the United States) who is a lawful permanent resident of the United States in at least 8 taxable years during the period of 15 taxable years ending with the taxable year during which the event described in subparagraph (A) or (B) of paragraph (1) occurs. For purposes of the preceding sentence, an individual shall not be treated as a lawful permanent resident for any taxable year if such individual is treated as a resident of a foreign country for the taxable year under the provisions of a tax treaty between the United States and the foreign country and does not waive the benefits of such treaty applicable to residents of the foreign country.

(3) Special rules

(A) Exceptions not to apply

Subsection (c) shall not apply to an individual who is treated as provided in paragraph (1).

(B) Step-up in basis

Solely for purposes of determining any tax imposed by reason of this subsection, property which was held by the long-term resident on the date the individual first became a resident of the United States shall be treated as having a basis on such date of not less than the fair market value of such property on such date. The preceding sentence shall not apply if the individual elects not to have such sentence apply. Such an election, once made, shall be irrevocable.

(4) Authority to exempt individuals

This subsection shall not apply to an individual who is described in a category of individuals prescribed by regulation by the Secretary.

(5) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations providing for the application of this subsection in cases where an alien individual becomes a resident of the United States during the 10-year period after being treated as provided in paragraph (1).

(f) Burden of proof

If the Secretary establishes that it is reasonable to believe that an individual's loss of United States citizenship would, but for this section, result in a substantial reduction for the taxable year in the taxes on his probable income for such year, the burden of proving for such taxable year that such loss of citizenship did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle B shall be on such individual.

(g) Physical presence

(1) In general

This section shall not apply to any individual to whom this section would otherwise apply for any taxable year during the 10-year period referred to in subsection (a) in which such individual is physically present in the United States at any time on more than 30 days in the calendar year ending in such taxable year, and such individual shall be treated for purposes of this title as a citizen or resident of the United States, as the case may be, for such taxable year.

(2) Exception

(A) In general

In the case of an individual described in any of the following subparagraphs of this paragraph, a day of physical presence in the United States shall be disregarded if the individual is performing services in the United States on such day for an employer. The preceding sentence shall not apply if—

(i) such employer is related (within the meaning of section 267 and 707) to such individual, or

(ii) such employer fails to meet such requirements as the Secretary may prescribe by regulations to prevent the avoidance of the purposes of this paragraph.

Not more than 30 days during any calendar year may be disregarded under this subparagraph.

(B) Individuals with ties to other countries

An individual is described in this subparagraph if—

(i) the individual becomes (not later than the close of a reasonable period after loss of United States citizenship or termination of residency) a citizen or resident of the country in which—

(I) such individual was born,

(II) if such individual is married, such individual's spouse was born, or

(III) either of such individual's parents were born, and

(ii) the individual becomes fully liable for income tax in such country.

(C) Minimal prior physical presence in the United States

An individual is described in this subparagraph if, for each year in the 10-year period ending on the date of loss of United States citizenship or termination of residency, the individual was physically present in the United States for 30 days or less. The rule of section 7701(b)(3)(D) shall apply for purposes of this subparagraph.

(h) Termination

This section shall not apply to any individual whose expatriation date (as defined in section

877A(g)(3)) is on or after the date of the enactment of this subsection.

(Added Pub. L. 89–809, title I, §103(f)(1), Nov. 13, 1966, 80 Stat. 1551; amended Pub. L. 93–406, title II, §2005(c)(8), Sept. 2, 1974, 88 Stat. 992; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title IV, §421(e)(5), Nov. 6, 1978, 92 Stat. 2876; Pub. L. 96–222, title I, §104(a)(1), (4)(H)(v), Apr. 1, 1980, 94 Stat. 214, 217; Pub. L. 99–514, title XII, §1243(a), Oct. 22, 1986, 100 Stat. 2580; Pub. L. 102–318, title V, §521(b)(31), July 3, 1992, 106 Stat. 312; Pub. L. 104–188, title I, §1401(b)(11), Aug. 20, 1996, 110 Stat. 1789; Pub. L. 104–191, title V, §511(a)–(d), (f)(1), Aug. 21, 1996, 110 Stat. 2093–2098; Pub. L. 105–34, title XVI, §1602(g)(1)–(4), (h)(3), Aug. 5, 1997, 111 Stat. 1095, 1096; Pub. L. 108–357, title VIII, §804(a)(1), (2), (c), Oct. 22, 2004, 118 Stat. 1569, 1570; Pub. L. 109–135, title IV, §403(v)(1), Dec. 21, 2005, 119 Stat. 2628; Pub. L. 110–245, title III, §301(c)(2)(A), (d), June 17, 2008, 122 Stat. 1646.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (h), is the date of enactment of Pub. L. 110–245, which was approved June 17, 2008.

PRIOR PROVISIONS

A prior section 877 was renumbered section 878 of this title.

AMENDMENTS

2008—Subsec. (e)(1). Pub. L. 110–245, §301(c)(2)(A), amended par. (1) generally. Prior to amendment, text read as follows: ''Any long-term resident of the United States who—

''(A) ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)), or

''(B) commences to be treated as a resident of a foreign country under the provisions of a tax treaty between the United States and the foreign country and who does not waive the benefits of such treaty applicable to residents of the foreign country,

shall be treated for purposes of this section and sections 2107, 2501, and 6039G in the same manner as if such resident were a citizen of the United States who lost United States citizenship on the date of such cessation or commencement.''

Subsec. (h). Pub. L. 110–245, §301(d), added subsec. (h).

2005—Subsec. (g)(2)(C). Pub. L. 109–135 substituted ''section 7701(b)(3)(D)'' for ''section 7701(b)(3)(D)(ii)''.

2004—Subsec. (a). Pub. L. 108–357, §804(a)(1), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, subsec. (a) stated general rule on taxation of nonresident alien individuals who lost United States citizenship and provided that an individual would be treated as having a tax avoidance purpose if the average annual net income tax was greater than $100,000 or the net worth of the individual was $500,000 or more.

Subsec. (c). Pub. L. 108–357, §804(a)(2), amended heading and text of subsec. (c) generally, substituting provisions setting forth exceptions for dual citizens and certain minors for provisions relating to inapplicability of presumption of tax avoidance to dual citizens, long-term foreign residents, minors who renounced citizenship upon reaching age of majority, and individuals specified in regulations.

Subsec. (g). Pub. L. 108–357, §804(c), added subsec. (g).

1997—Subsec. (d)(2)(B). Pub. L. 105–34, §1602(g)(1), substituted ''the 10-year period beginning on the date the individual loses United States citizenship'' for ''the 10-year period described in subsection (a)'' in introductory provisions.

Subsec. (d)(2)(D). Pub. L. 105–34, §1602(g)(2), inserted at end ''In the case of any exchange occurring during such 5 years, any gain recognized under this subparagraph shall be recognized immediately after such loss of citizenship.''

Subsec. (d)(3). Pub. L. 105–34, §1602(g)(3), inserted ''and the period applicable under paragraph (2)'' after ''subsection (a)'' in introductory provisions.

Subsec. (d)(4)(A). Pub. L. 105–34, §1602(g)(4)(C), struck out ''during the 10-year period referred to in subsection (a),'' before ''any income or gain'' in concluding provisions.

Subsec. (d)(4)(A)(i). Pub. L. 105–34, §1602(g)(4)(A), inserted ''during the 10-year period beginning on the date the individual loses United States citizenship'' after ''contributes property''.

Subsec. (d)(4)(A)(ii). Pub. L. 105–34, §1602(g)(4)(B), inserted ''immediately before such contribution'' after ''from such property''.

Subsec. (e)(1). Pub. L. 105–34, §1602(h)(3), substituted ''6039G'' for ''6039F'' in concluding provisions.

1996—Subsec. (a). Pub. L. 104–191, §511(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

''(a) IN GENERAL.—Every nonresident alien individual who at any time after March 8, 1965, and within the 10-year period immediately preceding the close of the taxable year lost United States citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle B, shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection exceeds the tax which, without regard to this section, is imposed pursuant to section 871.''

Subsec. (a)(1). Pub. L. 104–191, §511(d)(2), inserted ''(after any reduction in such tax under the last sentence of such subsection)'' after ''such subsection''.

Subsec. (b). Pub. L. 104–191, §511(d)(1), inserted at end ''The tax imposed solely by reason of this section shall be reduced (but not below zero) by the amount of any income, war profits, and excess profits taxes (within the meaning of section 903) paid to any foreign country or possession of the United States on any income of the taxpayer on which tax is imposed solely by reason of this section.''

Pub. L. 104–188 substituted ''section 1 or 55'' for ''section 1, 55, or 402(d)(1)''.

Subsec. (b)(1). Pub. L. 104–191, §511(b)(2), substituted ''subsection (d)'' for ''subsection (c)''.

Subsec. (c). Pub. L. 104–191, §511(b)(1), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104–191, §511(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(d) SPECIAL RULES OF SOURCE.—For purposes of subsection (b), the following items of gross income shall be treated as income from sources within the United States:

''(1) SALE OF PROPERTY.—Gains on the sale or exchange of property (other than stock or debt obligations) located in the United States.

''(2) STOCK OR DEBT OBLIGATIONS.—Gains on the sale or exchange of stock issued by a domestic corporation or debt obligations of United States persons or of the United States, a State or political subdivision thereof, or the District of Columbia.

For purposes of this section, gain on the sale or exchange of property which has a basis determined in whole or in part by reference to property described in paragraph (1) or (2) shall be treated as gain described in paragraph (1) or (2).''

Pub. L. 104–191, §511(b)(1), redesignated subsec. (c) as (d) and struck out former subsec. (d) which read as follows:

''(d) EXCEPTION FOR LOSS OF CITIZENSHIP FOR CERTAIN CAUSES.—Subsection (a) shall not apply to a nonresident alien individual whose loss of United States citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487).''

Subsecs. (e), (f). Pub. L. 104–191, § 511(f)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1992—Subsec. (b). Pub. L. 102–318 substituted ''402(d)(1)'' for ''402(e)(1)''.

1986—Subsec. (c). Pub. L. 99–514 inserted at end ''For purposes of this section, gain on the sale or exchange of property which has a basis determined in whole or in part by reference to property described in paragraph (1) or (2) shall be treated as gain described in paragraph (1) or (2).''

1980—Subsec. (b). Pub. L. 96–222 substituted ''55, or 402(e)(1)'' for ''section 55, 402(e)(1), or section 1201(b)''.

1978—Subsec. (b). Pub. L. 95–600 substituted ''section 1, section 55,'' for ''section 1''.

1976—Subsecs. (b)(2), (e). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (b). Pub. L. 93–406 inserted reference to section 402(e)(1).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 applicable to any individual whose expatriation date is on or after June 17, 2008, see section 301(g)(1) of Pub. L. 110–245, set out as an Effective Date note under section 2801 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VIII, § 804(f), Oct. 22, 2004, 118 Stat. 1573, provided that: ''The amendments made by this section [amending this section and sections 2107, 2501, 6039G, and 7701 of this title] shall apply to individuals who expatriate after June 3, 2004.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 effective as if included in the provisions of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, to which such amendment relates, see section 1602(i) of Pub. L. 105–34, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 511(g) of Pub. L. 104–191 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 2107 and 2501 of this title] shall apply to—

''(A) individuals losing United States citizenship (within the meaning of section 877 of the Internal Revenue Code of 1986) on or after February 6, 1995, and

''(B) long-term residents of the United States with respect to whom an event described in [former] subparagraph (A) or (B) of section 877(e)(1) of such Code occurs on or after February 6, 1995.

''(2) RULING REQUESTS.—In no event shall the 1-year period referred to in section 877(c)(1)(B) of such Code, as amended by this section, expire before the date which is 90 days after the date of the enactment of this Act [Aug. 21, 1996].

''(3) SPECIAL RULE.—

''(A) IN GENERAL.—In the case of an individual who performed an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)) before February 6, 1995, but who did not, on or before such date, furnish to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of such act, the amendments made by this section and section 512 [enacting section 6039F of this title] shall apply to such individual except that the 10-year period described in section 877(a) of such Code shall not expire before the end of the 10-year period beginning on the date such statement is so furnished.

''(B) EXCEPTION.—Subparagraph (A) shall not apply if the individual establishes to the satisfaction of the Secretary of the Treasury that such loss of United States citizenship occurred before February 6, 1994.''

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1243(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to sales or exchanges of property received in exchanges after September 25, 1985.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1966, see section 103(n)(1) of Pub. L. 89–809, set out as an Effective Date of 1966 Amendment note under section 871 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

§ 877A. Tax responsibilities of expatriation

(a) General rules

For purposes of this subtitle—

(1) Mark to market

All property of a covered expatriate shall be treated as sold on the day before the expatriation date for its fair market value.

(2) Recognition of gain or loss

In the case of any sale under paragraph (1)—

(A) notwithstanding any other provision of this title, any gain arising from such sale shall be taken into account for the taxable year of the sale, and

(B) any loss arising from such sale shall be taken into account for the taxable year of the sale to the extent otherwise provided by this title, except that section 1091 shall not apply to any such loss.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence, determined without regard to paragraph (3).

(3) Exclusion for certain gain

(A) In general

The amount which would (but for this paragraph) be includible in the gross income of any individual by reason of paragraph (1) shall be reduced (but not below zero) by $600,000.

(B) Adjustment for inflation

(i) In general

In the case of any taxable year beginning in a calendar year after 2008, the dollar amount in subparagraph (A) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ''calendar year 2007'' for ''calendar year 1992'' in subparagraph (B) thereof.

(ii) Rounding

If any amount as adjusted under clause (i) is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.

(b) Election to defer tax

(1) In general

If the taxpayer elects the application of this subsection with respect to any property treated as sold by reason of subsection (a), the time for payment of the additional tax attributable to such property shall be extended until the due date of the return for the taxable year in which such property is disposed of (or, in the case of property disposed of in a transaction in which gain is not recognized in whole or in part, until such other date as the Secretary may prescribe).

(2) Determination of tax with respect to property

For purposes of paragraph (1), the additional tax attributable to any property is an amount which bears the same ratio to the additional tax imposed by this chapter for the taxable year solely by reason of subsection (a) as the gain taken into account under subsection (a) with respect to such property bears to the total gain taken into account under subsection (a) with respect to all property to which subsection (a) applies.

(3) Termination of extension

The due date for payment of tax may not be extended under this subsection later than the due date for the return of tax imposed by this chapter for the taxable year which includes the date of death of the expatriate (or, if earlier, the time that the security provided with respect to the property fails to meet the requirements of paragraph (4), unless the taxpayer corrects such failure within the time specified by the Secretary).

(4) Security

(A) In general

No election may be made under paragraph (1) with respect to any property unless adequate security is provided with respect to such property.

(B) Adequate security

For purposes of subparagraph (A), security with respect to any property shall be treated as adequate security if—

(i) it is a bond which is furnished to, and accepted by, the Secretary, which is conditioned on the payment of tax (and interest thereon), and which meets the requirements of section 6325, or

(ii) it is another form of security for such payment (including letters of credit) that meets such requirements as the Secretary may prescribe.

(5) Waiver of certain rights

No election may be made under paragraph (1) unless the taxpayer makes an irrevocable waiver of any right under any treaty of the United States which would preclude assessment or collection of any tax imposed by reason of this section.

(6) Elections

An election under paragraph (1) shall only apply to property described in the election and, once made, is irrevocable.

(7) Interest

For purposes of section 6601, the last date for the payment of tax shall be determined without regard to the election under this subsection.

(c) Exception for certain property

Subsection (a) shall not apply to—

(1) any deferred compensation item (as defined in subsection (d)(4)),

(2) any specified tax deferred account (as defined in subsection (e)(2)), and

(3) any interest in a nongrantor trust (as defined in subsection (f)(3)).

(d) Treatment of deferred compensation items

(1) Withholding on eligible deferred compensation items

(A) In general

In the case of any eligible deferred compensation item, the payor shall deduct and

withhold from any taxable payment to a covered expatriate with respect to such item a tax equal to 30 percent thereof.

(B) Taxable payment

For purposes of subparagraph (A), the term ''taxable payment'' means with respect to a covered expatriate any payment to the extent it would be includible in the gross income of the covered expatriate if such expatriate continued to be subject to tax as a citizen or resident of the United States. A deferred compensation item shall be taken into account as a payment under the preceding sentence when such item would be so includible.

(2) Other deferred compensation items

In the case of any deferred compensation item which is not an eligible deferred compensation item—

(A)(i) with respect to any deferred compensation item to which clause (ii) does not apply, an amount equal to the present value of the covered expatriate's accrued benefit shall be treated as having been received by such individual on the day before the expatriation date as a distribution under the plan, and

(ii) with respect to any deferred compensation item referred to in paragraph (4)(D), the rights of the covered expatriate to such item shall be treated as becoming transferable and not subject to a substantial risk of forfeiture on the day before the expatriation date,

(B) no early distribution tax shall apply by reason of such treatment, and

(C) appropriate adjustments shall be made to subsequent distributions from the plan to reflect such treatment.

(3) Eligible deferred compensation items

For purposes of this subsection, the term ''eligible deferred compensation item'' means any deferred compensation item with respect to which—

(A) the payor of such item is—

(i) a United States person, or

(ii) a person who is not a United States person but who elects to be treated as a United States person for purposes of paragraph (1) and meets such requirements as the Secretary may provide to ensure that the payor will meet the requirements of paragraph (1), and

(B) the covered expatriate—

(i) notifies the payor of his status as a covered expatriate, and

(ii) makes an irrevocable waiver of any right to claim any reduction under any treaty with the United States in withholding on such item.

(4) Deferred compensation item

For purposes of this subsection, the term ''deferred compensation item'' means—

(A) any interest in a plan or arrangement described in section 219(g)(5),

(B) any interest in a foreign pension plan or similar retirement arrangement or program,

(C) any item of deferred compensation, and

(D) any property, or right to property, which the individual is entitled to receive in connection with the performance of services to the extent not previously taken into account under section 83 or in accordance with section 83.

(5) Exception

Paragraphs (1) and (2) shall not apply to any deferred compensation item to the extent attributable to services performed outside the United States while the covered expatriate was not a citizen or resident of the United States.

(6) Special rules

(A) Application of withholding rules

Rules similar to the rules of subchapter B of chapter 3 shall apply for purposes of this subsection.

(B) Application of tax

Any item subject to the withholding tax imposed under paragraph (1) shall be subject to tax under section 871.

(C) Coordination with other withholding requirements

Any item subject to withholding under paragraph (1) shall not be subject to withholding under section 1441 or chapter 24.

(e) Treatment of specified tax deferred accounts

(1) Account treated as distributed

In the case of any interest in a specified tax deferred account held by a covered expatriate on the day before the expatriation date—

(A) the covered expatriate shall be treated as receiving a distribution of his entire interest in such account on the day before the expatriation date,

(B) no early distribution tax shall apply by reason of such treatment, and

(C) appropriate adjustments shall be made to subsequent distributions from the account to reflect such treatment.

(2) Specified tax deferred account

For purposes of paragraph (1), the term ''specified tax deferred account'' means an individual retirement plan (as defined in section 7701(a)(37)) other than any arrangement described in subsection (k) or (p) of section 408, a qualified tuition program (as defined in section 529), a Coverdell education savings account (as defined in section 530), a health savings account (as defined in section 223), and an Archer MSA (as defined in section 220).

(f) Special rules for nongrantor trusts

(1) In general

In the case of a distribution (directly or indirectly) of any property from a nongrantor trust to a covered expatriate—

(A) the trustee shall deduct and withhold from such distribution an amount equal to 30 percent of the taxable portion of the distribution, and

(B) if the fair market value of such property exceeds its adjusted basis in the hands of the trust, gain shall be recognized to the

trust as if such property were sold to the expatriate at its fair market value.

(2) Taxable portion

For purposes of this subsection, the term ''taxable portion'' means, with respect to any distribution, that portion of the distribution which would be includible in the gross income of the covered expatriate if such expatriate continued to be subject to tax as a citizen or resident of the United States.

(3) Nongrantor trust

For purposes of this subsection, the term ''nongrantor trust'' means the portion of any trust that the individual is not considered the owner of under subpart E of part I of subchapter J. The determination under the preceding sentence shall be made immediately before the expatriation date.

(4) Special rules relating to withholding

For purposes of this subsection—

(A) rules similar to the rules of subsection (d)(6) shall apply, and

(B) the covered expatriate shall be treated as having waived any right to claim any reduction under any treaty with the United States in withholding on any distribution to which paragraph (1)(A) applies unless the covered expatriate agrees to such other treatment as the Secretary determines appropriate.

(5) Application

This subsection shall apply to a nongrantor trust only if the covered expatriate was a beneficiary of the trust on the day before the expatriation date.

(g) Definitions and special rules relating to expatriation

For purposes of this section—

(1) Covered expatriate

(A) In general

The term ''covered expatriate'' means an expatriate who meets the requirements of subparagraph (A), (B), or (C) of section 877(a)(2).

(B) Exceptions

An individual shall not be treated as meeting the requirements of subparagraph (A) or (B) of section 877(a)(2) if—

(i) the individual—

(I) became at birth a citizen of the United States and a citizen of another country and, as of the expatriation date, continues to be a citizen of, and is taxed as a resident of, such other country, and

(II) has been a resident of the United States (as defined in section 7701(b)(1)(A)(ii)) for not more than 10 taxable years during the 15-taxable year period ending with the taxable year during which the expatriation date occurs, or

(ii)(I) the individual's relinquishment of United States citizenship occurs before such individual attains age 18½, and

(II) the individual has been a resident of the United States (as so defined) for not more than 10 taxable years before the date of relinquishment.

(C) Covered expatriates also subject to tax as citizens or residents

In the case of any covered expatriate who is subject to tax as a citizen or resident of the United States for any period beginning after the expatriation date, such individual shall not be treated as a covered expatriate during such period for purposes of subsections (d)(1) and (f) and section 2801.

(2) Expatriate

The term ''expatriate'' means—

(A) any United States citizen who relinquishes his citizenship, and

(B) any long-term resident of the United States who ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)).

(3) Expatriation date

The term ''expatriation date'' means—

(A) the date an individual relinquishes United States citizenship, or

(B) in the case of a long-term resident of the United States, the date on which the individual ceases to be a lawful permanent resident of the United States (within the meaning of section 7701(b)(6)).

(4) Relinquishment of citizenship

A citizen shall be treated as relinquishing his United States citizenship on the earliest of—

(A) the date the individual renounces his United States nationality before a diplomatic or consular officer of the United States pursuant to paragraph (5) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(5)),

(B) the date the individual furnishes to the United States Department of State a signed statement of voluntary relinquishment of United States nationality confirming the performance of an act of expatriation specified in paragraph (1), (2), (3), or (4) of section 349(a) of the Immigration and Nationality Act (8 U.S.C. 1481(a)(1)–(4)),

(C) the date the United States Department of State issues to the individual a certificate of loss of nationality, or

(D) the date a court of the United States cancels a naturalized citizen's certificate of naturalization.

Subparagraph (A) or (B) shall not apply to any individual unless the renunciation or voluntary relinquishment is subsequently approved by the issuance to the individual of a certificate of loss of nationality by the United States Department of State.

(5) Long-term resident

The term ''long-term resident'' has the meaning given to such term by section 877(e)(2).

(6) Early distribution tax

The term ''early distribution tax'' means any increase in tax imposed under section 72(t), 220(e)(4),[1] 223(f)(4), 409A(a)(1)(B), 529(c)(6), or 530(d)(4).

[1] See References in Text note below.

(h) Other rules

(1) Termination of deferrals, etc.

In the case of any covered expatriate, notwithstanding any other provision of this title—

(A) any time period for acquiring property which would result in the reduction in the amount of gain recognized with respect to property disposed of by the taxpayer shall terminate on the day before the expatriation date, and

(B) any extension of time for payment of tax shall cease to apply on the day before the expatriation date and the unpaid portion of such tax shall be due and payable at the time and in the manner prescribed by the Secretary.

(2) Step-up in basis

Solely for purposes of determining any tax imposed by reason of subsection (a), property which was held by an individual on the date the individual first became a resident of the United States (within the meaning of section 7701(b)) shall be treated as having a basis on such date of not less than the fair market value of such property on such date. The preceding sentence shall not apply if the individual elects not to have such sentence apply. Such an election, once made, shall be irrevocable.

(3) Coordination with section 684

If the expatriation of any individual would result in the recognition of gain under section 684, this section shall be applied after the application of section 684.

(i) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 110–245, title III, § 301(a), June 17, 2008, 122 Stat. 1638.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

Section 220(e), referred to in subsec. (g)(6), does not contain a par. (4).

EFFECTIVE DATE

Section applicable to any individual whose expatriation date is on or after June 17, 2008, see section 301(g)(1) of Pub. L. 110–245, set out as a note under section 2801 of this title.

§ 878. Foreign educational, charitable, and certain other exempt organizations

For special provisions relating to foreign educational, charitable, and other exempt organizations, see sections 512(a) and 4948.

(Aug. 16, 1954, ch. 736, 68A Stat. 282, § 877; renumbered § 878, Pub. L. 89–809, title I, § 103(f)(1), Nov. 13, 1966, 80 Stat. 1551; amended Pub. L. 91–172, title I, § 101(j)(20), Dec. 30, 1969, 83 Stat. 528.)

AMENDMENTS

1969—Pub. L. 91–172 substituted provisions requiring reference to organizations in sections 512(a) and 4948 for provisions requiring reference to trusts in section 512(a), and struck out reference to unrelated business income.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

§ 879. Tax treatment of certain community income in the case of nonresident alien individuals

(a) General rule

In the case of a married couple 1 or both of whom are nonresident alien individuals and who have community income for the taxable year, such community income shall be treated as follows:

(1) Earned income (within the meaning of section 911(d)(2)), other than trade or business income and a partner's distributive share of partnership income, shall be treated as the income of the spouse who rendered the personal services,

(2) Trade or business income, and a partner's distributive share of partnership income, shall be treated as provided in section 1402(a)(5),

(3) Community income not described in paragraph (1) or (2) which is derived from the separate property (as determined under the applicable community property law) of one spouse shall be treated as the income of such spouse, and

(4) All other such community income shall be treated as provided in the applicable community property law.

(b) Exception where election under section 6013(g) is in effect

Subsection (a) shall not apply for any taxable year for which an election under subsection (g) or (h) of section 6013 (relating to election to treat nonresident alien individual as resident of the United States) is in effect.

(c) Definitions and special rules

For purposes of this section—

(1) Community income

The term ''community income'' means income which, under applicable community property laws, is treated as community income.

(2) Community property laws

The term ''community property laws'' means the community property laws of a State, a foreign country, or a possession of the United States.

(3) Determination of marital status

The determination of marital status shall be made under section 7703(a).

(Added Pub. L. 94–455, title X, § 1012(b)(1), Oct. 4, 1976, 90 Stat. 1613; amended Pub. L. 97–34, title I, § 111(b)(4), Aug. 13, 1981, 95 Stat. 194; Pub. L. 98–369, div. A, title I, § 139(a), (b)(1), July 18, 1984, 98 Stat. 677; Pub. L. 99–514, title XIII, § 1301(j)(9), Oct. 22, 1986, 100 Stat. 2658.)

AMENDMENTS

1986—Subsec. (c)(3). Pub. L. 99–514 substituted ''section 7703(a)'' for ''section 143(a)''.

1984—Pub. L. 98–369, § 139(b)(1), substituted ''nonresident alien individuals'' for ''a resident or citizen of the United States who is married to a nonresident alien individual'' in section catchline.

Subsec. (a). Pub. L. 98–369, § 139(a), substituted in provision preceding par. (1) ''married couple 1 or both of whom are nonresident alien individuals'' for ''citizen or resident of the United States who is married to a nonresident alien individual''.

1981—Subsec. (a)(1). Pub. L. 97–34 substituted ''section 911(d)(2)'' for ''section 911(b)''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 139(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1984.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as a note under section 911 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1976, see section 1012(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 6013 of this title.

SUBPART B—FOREIGN CORPORATIONS

Sec.
881. Tax on income of foreign corporations not connected with United States business.
882. Tax on income of foreign corporations connected with United States business.
883. Exclusions from gross income.
884. Branch profits tax.
885. Cross references.

AMENDMENTS

1986—Pub. L. 99–514, title XII, § 1241(d), Oct. 22, 1986, 100 Stat. 2580, added item 884 and redesignated former item 884 as 885.

1966—Pub. L. 89–809, title I, § 104(b)(3), Nov. 13, 1966, 80 Stat. 1557, substituted ''Tax on income of foreign corporations not connected with United States business'' for ''Tax on foreign corporations not engaged in business in United States'' in item 881, and ''Tax on income of foreign corporations connected with United States business'' for ''Tax on resident foreign corporations'' in item 882.

§ 881. Tax on income of foreign corporations not connected with United States business

(a) Imposition of tax

Except as provided in subsection (c), there is hereby imposed for each taxable year a tax of 30 percent of the amount received from sources within the United States by a foreign corporation as—

(1) interest (other than original issue discount as defined in section 1273), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income,

(2) gains described in section 631(b) or (c),

(3) in the case of—

(A) a sale or exchange of an original issue discount obligation, the amount of the original issue discount accruing while such obligation was held by the foreign corporation (to the extent such discount was not theretofore taken into account under subparagraph (B)), and

(B) a payment on an original issue discount obligation, an amount equal to the original issue discount accruing while such obligation was held by the foreign corporation (except that such original issue discount shall be taken into account under this subparagraph only to the extent such discount was not theretofore taken into account under this subparagraph and only to the extent that the tax thereon does not exceed the payment less the tax imposed by paragraph (1) thereon), and

(4) gains from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property, or of any interest in any such property, to the extent such gains are from payments which are contingent on the productivity, use, or disposition of the property or interest sold or exchanged,

but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

(b) Exception for certain possessions

(1) Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands

For purposes of this section and section 884, a corporation created or organized in Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands or under the law of any such possession shall not be treated as a foreign corporation for any taxable year if—

(A) at all times during such taxable year less than 25 percent in value of the stock of such corporation is beneficially owned (directly or indirectly) by foreign persons,

(B) at least 65 percent of the gross income of such corporation is shown to the satisfaction of the Secretary to be effectively connected with the conduct of a trade or business in such a possession or the United States for the 3-year period ending with the close of the taxable year of such corporation (or for such part of such period as the corporation or any predecessor has been in existence), and

(C) no substantial part of the income of such corporation is used (directly or indirectly) to satisfy obligations to persons who are not bona fide residents of such a possession or the United States.

(2) Commonwealth of Puerto Rico

(A) In general

If dividends are received during a taxable year by a corporation—

(i) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

(ii) with respect to which the requirements of subparagraphs (A), (B), and (C) of paragraph (1) are met for the taxable year,

subsection (a) shall be applied for such taxable year by substituting ''10 percent'' for ''30 percent''.

(B) Applicability

If, on or after the date of the enactment of this paragraph, an increase in the rate of the Commonwealth of Puerto Rico's withholding tax which is generally applicable to dividends paid to United States corporations not engaged in a trade or business in the Commonwealth to a rate greater than 10 percent takes effect, this paragraph shall not apply to dividends received on or after the effective date of the increase.

(3) Definitions

(A) Foreign person

For purposes of paragraph (1), the term ''foreign person'' means any person other than—

(i) a United States person, or

(ii) a person who would be a United States person if references to the United States in section 7701 included references to a possession of the United States.

(B) Indirect ownership rules

For purposes of paragraph (1), the rules of section 318(a)(2) shall apply except that ''5 percent'' shall be substituted for ''50 percent'' in subparagraph (C) thereof.

(c) Repeal of tax on interest of foreign corporations received from certain portfolio debt investments

(1) In general

In the case of any portfolio interest received by a foreign corporation from sources within the United States, no tax shall be imposed under paragraph (1) or (3) of subsection (a).

(2) Portfolio interest

For purposes of this subsection, the term ''portfolio interest'' means any interest (including original issue discount) which would be subject to tax under subsection (a) but for this subsection and which is described in any of the following subparagraphs:

(A) Certain obligations which are not registered

Interest which is paid on any obligation which is described in section 871(h)(2)(A).

(B) Certain registered obligations

Interest which is paid on an obligation—

(i) which is in registered form, and

(ii) with respect to which the person who would otherwise be required to deduct and withhold tax from such interest under section 1442(a) receives a statement which meets the requirements of section 871(h)(5) that the beneficial owner of the obligation is not a United States person.

(3) Portfolio interest shall not include interest received by certain persons

For purposes of this subsection, the term ''portfolio interest'' shall not include any portfolio interest which—

(A) except in the case of interest paid on an obligation of the United States, is received by a bank on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business,

(B) is received by a 10-percent shareholder (within the meaning of section 871(h)(3)(B)), or

(C) is received by a controlled foreign corporation from a related person (within the meaning of section 864(d)(4)).

(4) Portfolio interest not to include certain contingent interest

For purposes of this subsection, the term ''portfolio interest'' shall not include any interest which is treated as not being portfolio interest under the rules of section 871(h)(4).

(5) Special rules for controlled foreign corporations

(A) In general

In the case of any portfolio interest received by a controlled foreign corporation, the following provisions shall not apply:

(i) Subparagraph (A) of section 954(b)(3) (relating to exception where foreign base company income is less than 5 percent or $1,000,000).

(ii) Paragraph (4) of section 954(b) (relating to exception for certain income subject to high foreign taxes).

(iii) Clause (i) of section 954(c)(3)(A) (relating to certain income received from related persons).

(B) Controlled foreign corporation

For purposes of this subsection, the term ''controlled foreign corporation'' has the meaning given to such term by section 957(a).

(6) Secretary may cease application of this subsection

Under rules similar to the rules of section 871(h)(6), the Secretary may provide that this subsection shall not apply to payments of interest described in section 871(h)(6).

(7) Registered form

For purposes of this subsection, the term ''registered form'' has the meaning given such term by section 163(f).

(d) Tax not to apply to certain interest and dividends

No tax shall be imposed under paragraph (1) or (3) of subsection (a) on any amount described in section 871(i)(2).

(e) Tax not to apply to certain dividends of regulated investment companies

(1) Interest-related dividends

(A) In general

Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1) of subsection (a) on any interest-related dividend (as defined in section 871(k)(1)) received from a regulated investment company.

(B) Exception

Subparagraph (A) shall not apply—

(i) to any dividend referred to in section 871(k)(1)(B), and

(ii) to any interest-related dividend received by a controlled foreign corporation (within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company from a person who is a related person (within the meaning of section 864(d)(4)) with respect to such controlled foreign corporation.

(C) Treatment of dividends received by controlled foreign corporations

The rules of subsection (c)(5)(A) shall apply to any interest-related dividend received by a controlled foreign corporation (within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company which is described in clause (ii) of section 871(k)(1)(E) (and not described in clause (i) or (iii) of such section).

(2) Short-term capital gain dividends

No tax shall be imposed under paragraph (1) of subsection (a) on any short-term capital gain dividend (as defined in section 871(k)(2)) received from a regulated investment company.

(f) Cross reference

For doubling of tax on corporations of certain foreign countries, see section 891.

For special rules for original issue discount, see section 871(g).

(Aug. 16, 1954, ch. 736, 68A Stat. 282; Pub. L. 89–809, title I, §104(a), Nov. 13, 1966, 80 Stat. 1555; Pub. L. 92–178, title III, §313(a), (c), Dec. 10, 1971, 85 Stat. 526, 527; Pub. L. 92–606, §1(e)(1), Oct. 31, 1972, 86 Stat. 1497; Pub. L. 94–455, title XIX, §1901(b)(3)(I), Oct. 4, 1976, 90 Stat. 1793; Pub. L. 98–369, div. A, title I, §§42(a)(10), 127(b), 128(b), 130(a), July 18, 1984, 98 Stat. 557, 650, 654, 660; Pub. L. 99–514, title XII, §§1211(b)(6), 1214(c)(2), 1223(b)(2), 1273(b)(1), (2)(A), title XVIII, §§1810(d)(1)(B), (3)(C), (e)(2)(B), 1899A(22), (23), (68), Oct. 22, 1986, 100 Stat. 2536, 2542, 2558, 2595, 2596, 2825, 2826, 2959, 2962; Pub. L. 100–647, title I, §1012(i)(17), Nov. 10, 1988, 102 Stat. 3510; Pub. L. 103–66, title XIII, §13237(a)(2), (c)(2), (3), Aug. 10, 1993, 107 Stat. 507, 508; Pub. L. 108–357, title IV, §§411(a)(2), 420(a), (c), Oct. 22, 2004, 118 Stat. 1503, 1513, 1514; Pub. L. 109–135, title IV, §412(jj), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 111–147, title V, §502(b)(2)(B), Mar. 18, 2010, 124 Stat. 107.)

AMENDMENT OF SUBSECTION (c)(2)

Pub. L. 111–147, title V, §502(b)(2)(B), (f), Mar. 18, 2010, 124 Stat. 107, 108, provided that, applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, subsection (c)(2) of this section is amended to read as follows:

(2) Portfolio interest

For purposes of this subsection, the term ''portfolio interest'' means any interest (including original issue discount) which—

(A) would be subject to tax under subsection (a) but for this subsection, and

(B) is paid on an obligation—

(i) which is in registered form, and

(ii) with respect to which—

(I) the person who would otherwise be required to deduct and withhold tax from such interest under section 1442(a) receives a statement which meets the requirements of section 871(h)(5) that the beneficial owner of the obligation is not a United States person, or

(II) the Secretary has determined that such a statement is not required in order to carry out the purposes of this subsection.

REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (b)(2)(B), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2005—Subsec. (e)(1)(C). Pub. L. 109–135 inserted ''interest-related dividend received by a controlled foreign corporation'' after ''shall apply to any''.

2004—Subsec. (b). Pub. L. 108–357, §420(c)(1), substituted ''possessions'' for ''Guam and Virgin Islands corporations'' in heading.

Subsec. (b)(1). Pub. L. 108–357, §420(c)(2), substituted ''Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands'' for ''In general'' in heading.

Subsec. (b)(2), (3). Pub. L. 108–357, §420(a), added par. (2) and redesignated former par. (2) as (3).

Subsec. (e), (f). Pub. L. 108–357, §411(a)(2), added subsec. (e) and redesignated former subsec. (e) as (f).

1993—Subsec. (c)(2)(B)(ii). Pub. L. 103–66, §13237(c)(2), substituted ''section 871(h)(5)'' for ''section 871(h)(4)''.

Subsec. (c)(4), (5). Pub. L. 103–66, §13237(a)(2), added par. (4) and redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (c)(6). Pub. L. 103–66, §13237(a)(2), (c)(3), redesignated par. (5) as (6) and substituted ''section 871(h)(6)'' for ''section 871(h)(5)'' in two places. Former par. (6) redesignated (7).

Subsec. (c)(7). Pub. L. 103–66, §13237(a)(2), redesignated par. (6) as (7).

1988—Subsec. (c)(4)(A)(ii) to (v). Pub. L. 100–647 added cls. (ii) and (iii) and struck out former cls. (ii) to (v), which read as follows:

''(ii) Paragraph (4) of section 954(b) (relating to corporations not formed or availed of to avoid tax).

''(iii) Subparagraph (B) of section 954(c)(3) (relating to certain income derived in active conduct of trade or business).

''(iv) Subparagraph (C) of section 954(c)(3) (relating to certain income derived by an insurance company).

''(v) Subparagraphs (A) and (B) of section 954(c)(4) (relating to exception for certain income received from related persons).''

1986—Subsec. (a)(3)(A). Pub. L. 99–514, §1810(e)(2)(B), amended subpar. (A) generally, striking out ''any gain not in excess of'' before ''the original issue discount''.

Subsec. (a)(3)(B). Pub. L. 99–514, §1810(e)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this subparagraph only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by paragraph (1) thereon), and''.

Subsec. (a)(4). Pub. L. 99–514, §1211(b)(6), struck out ''or from payments which are treated as being so contingent under section 871(e),'' after ''sold or exchanged,''.

Subsec. (b)(1). Pub. L. 99–514, §1273(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For purposes of this section, a corporation created or organized in Guam or the Virgin Islands or under the law of Guam or the Virgin Islands shall not be treated as a foreign corporation for any taxable year if—

''(A) at all times during such taxable year less than 25 percent in value of the stock of such corporation is owned (directly or indirectly) by foreign persons, and

''(B) at least 20 percent of the gross income of such corporation is shown to the satisfaction of the Secretary to have been derived from sources within Guam or the Virgin Islands (as the case may be) for the 3-year period ending with the close of the preceding taxable year of such corporation (or for such part of such period as the corporation has been in existence).''

Subsec. (b)(2). Pub. L. 99–514, § 1273(b)(1), (2)(A), redesignated par. (3) as (2) and struck out former par. (2) which provided that par. (1) of this subsection not apply with respect to income tax liability incurred to Guam.

Subsec. (b)(2)(A). Pub. L. 99–514, § 1899A(22), substituted ''paragraph'' for ''Paragraph''.

Subsec. (b)(3), (4). Pub. L. 99–514, § 1273(b)(2)(A), redesignated par. (3) as (2) and struck out par. (4) which provided a cross reference to sections 934 and 934A.

Subsec. (c). Pub. L. 99–514, § 1899A(68), made clarifying amendment to directory language of Pub. L. 98–369, § 127(b)(1). See 1984 Amendment note below.

Subsec. (c)(2). Pub. L. 99–514, § 1810(d)(1)(B), (3)(C), inserted ''which would be subject to tax under subsection (a) but for this subsection and'' in introductory provisions and substituted ''receives a statement'' for ''has received a statement'' in subpar. (B)(ii).

Subsec. (c)(3)(C). Pub. L. 99–514, § 1899A(23), inserted a closing parenthesis following ''section 864(d)(4)''.

Subsec. (c)(4)(A)(i). Pub. L. 99–514, § 1223(b)(2), substituted ''less than 5 percent or $1,000,000'' for ''less than 10 percent''.

Subsecs. (d), (e). Pub. L. 99–514, § 1214(c)(2), added subsec. (d) and redesignated former subsec. (d) as (e).

1984—Subsec. (a). Pub. L. 98–369, § 127(b)(2), substituted ''Except as provided in subsection (c), there'' for ''There'' in introductory provision.

Subsec. (a)(1). Pub. L. 98–369, § 42(a)(10), substituted ''section 1273'' for ''section 1232(b)''.

Subsec. (a)(3). Pub. L. 98–369, § 128(b)(1), amended par. (3) generally, substituting in subpar. (A), ''a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the foreign corporation (to the extent such discount was not theretofore taken into account under subparagraph (B)), and'' for ''bonds or other evidences of indebtedness issued after September 28, 1965, and before April 1, 1972, amounts which under section 1232(a)(2)(B) are considered as ordinary income, and, in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact the obligations were issued after May 27, 1969,'', substituting in subpar. (B), ''the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this subparagraph only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by paragraph (1) thereon), and'' for ''bonds or other evidences of indebtedness issued after March 31, 1972, and payable more than 6 months from the date of original issue (without regard to the period held by the taxpayer), amounts which under section 1232(a)(2)(B) would be considered as ordinary income but for the fact such obligations were issued after May 27, 1969, and'', and striking out subpar. (C) which required that in the case of the payment of interest on an obligation described in subpar. (B), an amount equal to the original issue discount, but not in excess of such interest less the tax imposed by par. (1) thereon, accrued on such obligation since the last payment of interest thereon, be included for purpose of the 30 percent tax.

Subsec. (b). Pub. L. 98–369, § 130(a), amended subsec. (b) generally, substituting provision establishing an exception for certain Guam and Virgin Islands corporations for provision establishing an exception for Guam corporations.

Subsec. (c). Pub. L. 98–369, § 127(b)(1), as amended by Pub. L. 99–514, § 1899A(68), added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 98–369, § 128(b)(2), amended subsec. (c) generally, substituting in heading ''Cross reference'' for ''Doubling of tax'' and inserting provision directing that for special rules for original issue discount, see section 871(g).

Subsec. (d). Pub. L. 98–369, § 127(b)(1), as amended by Pub. L. 99–514, § 1899A(68), redesignated subsec. (c) as (d).

1976—Subsec. (a)(3)(A), (B). Pub. L. 94–455 substituted ''ordinary income'' for ''gain from the sale or exchange of property which is not a capital asset''.

1972—Subsecs. (b), (c). Pub. L. 92–606 added subsec. (b) and redesignated former subsec. (b) as (c).

1971—Subsec. (a)(1). Pub. L. 92–178, § 313(a), inserted ''(other than original issue discount as defined in section 1232(b))'' after ''interest''.

Subsec. (a)(3). Pub. L. 92–178, § 313(c), designated existing provisions as subpar. (A), inserted ''and before April 1, 1972,'' after ''September 28, 1965,'', substituted ''section 1232(a)(2)(B)'' for ''section 1232'', and inserted '', in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact that the obligations were issued after May 27, 1969,'', and added subpars. (B) and (C).

1966—Subsec. (a). Pub. L. 89–809 substantially revised the income tax treatment of foreign corporations, substituted the concept of amounts received from sources within the United States by foreign corporations but not effectively connected with the conduct of a trade or business within the United States for the concept of amounts received from sources within the United States by foreign corporations not engaged in trade or business within the United States as the amount upon which the existing 30 percent levy should be imposed, and added contingent income received from the sale of patents and other intangibles and amounts of original issue discount which are treated as ordinary income received on retirement or sale or exchange of bonds or other evidences of indebtedness issued after Sept. 28, 1965, to the specified types of fixed or determinable income.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–147 applicable to obligations issued after the date which is 2 years after Mar. 18, 2010, see section 502(f) of Pub. L. 111–147, set out as a note under section 149 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 411(a)(2) of Pub. L. 108–357 applicable to dividends with respect to taxable years of regulated investment companies beginning after Dec. 31, 2004, see section 411(d)(1) of Pub. L. 108–357, set out as a note under section 871 of this title.

Pub. L. 108–357, title IV, § 420(d), Oct. 22, 2004, 118 Stat. 1514, provided that: ''The amendments made by this section [amending this section and section 1442 of this title] shall apply to dividends paid after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to interest received after Dec. 31, 1993, see section 13237(d) of Pub. L. 103–66, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1211(b)(6) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Amendment by section 1214(c)(2) of Pub. L. 99–514 applicable to payments made in taxable year of payor beginning after Dec. 31, 1986, except as otherwise provided, see section 1214(d) of Pub. L. 99–514, as amended, set out as a note under section 861 of this title.

Amendment by section 1223(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1223(c) of Pub. L. 99–514, set out as a note under section 864 of this title.

Amendment by section 1273(b)(1), (2)(A) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1810(d)(1)(B), (3)(C), (e)(2)(B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(10) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 127(b) of Pub. L. 98–369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years after such date, see section 127(g)(1) of Pub. L. 98–369, set out as a note under section 871 of this title.

Amendment by section 128(b) of Pub. L. 98–369 applicable to payments made on or after the 60th day after July 18, 1984, with respect to obligations issued after Mar. 31, 1972, see section 128(d)(1) of Pub. L. 98–369, set out as a note under section 871 of this title.

Section 130(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 1442 and 7651 of this title] shall apply to payments made after March 1, 1984, in taxable years ending after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 2 of Pub. L. 92–606 provided in part that: ''The amendments made by section 1(e)(1) [amending this section] shall apply with respect to taxable years beginning after December 31, 1971.''

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 313(f) of Pub. L. 92–178, set out as a note under section 871 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendments by sections 1211(b)(6) and 1214(c)(2) of Pub. L. 99–514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 882. Tax on income of foreign corporations connected with United States business

(a) Imposition of tax

(1) In general

A foreign corporation engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 11, 55, 59A, or 1201(a) on its taxable income which is effectively connected with the conduct of a trade or business within the United States.

(2) Determination of taxable income

In determining taxable income for purposes of paragraph (1), gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States.

(3) [Cross reference [1]]

For special tax treatment of gain or loss from the disposition by a foreign corporation of a United States real property interest, see section 897.

(b) Gross income

In the case of a foreign corporation, except where the context clearly indicates otherwise, gross income includes only—

(1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and

(2) gross income which is effectively connected with the conduct of a trade or business within the United States.

(c) Allowance of deductions and credits

(1) Allocation of deductions

(A) General rule

In the case of a foreign corporation, the deductions shall be allowed only for purposes of subsection (a) and (except as provided by subparagraph (B)) only if and to the extent that they are connected with income which is effectively connected with the conduct of a trade or business within the United States; and the proper apportionment and allocation of the deductions for this purpose shall be determined as provided in regulations prescribed by the Secretary.

(B) Charitable contributions

The deduction for charitable contributions and gifts provided by section 170 shall be al-

[1] Par. (3) heading editorially supplied.

lowed whether or not connected with income which is effectively connected with the conduct of a trade or business within the United States.

(2) Deductions and credits allowed only if return filed

A foreign corporation shall receive the benefit of the deductions and credits allowed to it in this subtitle only by filing or causing to be filed with the Secretary a true and accurate return, in the manner prescribed in subtitle F, including therein all the information which the Secretary may deem necessary for the calculation of such deductions and credits. The preceding sentence shall not apply for purposes of the tax imposed by section 541 (relating to personal holding company tax), and shall not be construed to deny the credit provided by section 33 for tax withheld at source or the credit provided by section 34 for certain uses of gasoline.

(3) Foreign tax credit

Except as provided by section 906, foreign corporations shall not be allowed the credit against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(4) Cross reference

For rule that certain foreign taxes are not to be taken into account in determining deduction or credit, see section 906(b)(1).

(d) Election to treat real property income as income connected with United States business

(1) In general

A foreign corporation which during the taxable year derives any income—

(A) from real property located in the United States, or from any interest in such real property, including (i) gains from the sale or exchange of real property or an interest therein, (ii) rents or royalties from mines, wells, or other natural deposits, and (iii) gains described in section 631(b) or (c), and

(B) which, but for this subsection, would not be treated as income effectively connected with the conduct of a trade or business within the United States,

may elect for such taxable year to treat all such income as income which is effectively connected with the conduct of a trade or business within the United States. In such case, such income shall be taxable as provided in subsection (a)(1) whether or not such corporation is engaged in trade or business within the United States during the taxable year. An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary with respect to any taxable year.

(2) Election after revocation, etc.

Paragraphs (2) and (3) of section 871(d) shall apply in respect of elections under this subsection in the same manner and to the same extent as they apply in respect of elections under section 871(d).

(e) Interest on United States obligations received by banks organized in possessions

In the case of a corporation created or organized in, or under the law of, a possession of the United States which is carrying on the banking business in a possession of the United States, interest on obligations of the United States which is not portfolio interest (as defined in section 881(c)(2)) shall—

(1) for purposes of this subpart, be treated as income which is effectively connected with the conduct of a trade or business within the United States, and

(2) shall be taxable as provided in subsection (a)(1) whether or not such corporation is engaged in trade or business within the United States during the taxable year.

(f) Returns of tax by agent

If any foreign corporation has no office or place of business in the United States but has an agent in the United States, the return required under section 6012 shall be made by the agent.

(Aug. 16, 1954, ch. 736, 68A Stat. 282; Pub. L. 89–809, title I, § 104(b)(1), Nov. 13, 1966, 80 Stat. 1555; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title III, § 301(b)(13), Nov. 6, 1978, 92 Stat. 2822; Pub. L. 96–499, title XI, § 1122(c)(2), Dec. 5, 1980, 94 Stat. 2687; Pub. L. 97–424, title V, § 515(b)(6)(F), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98–369, div. A, title IV, § 474(r)(19), July 18, 1984, 98 Stat. 843; Pub. L. 99–514, title VII, § 701(e)(4)(F), title XII, § 1236(a), Oct. 22, 1986, 100 Stat. 2343, 2576; Pub. L. 100–647, title I, § 1012(s)(2)(B), title II, § 2001(c)(2), title VI, § 6133(a), Nov. 10, 1988, 102 Stat. 3527, 3594, 3721.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–647, § 2001(c)(2), inserted reference to section 59A.

Subsec. (b). Pub. L. 100–647, § 1012(s)(2)(B), inserted ", except where the context clearly indicates otherwise" after "foreign corporation".

Subsec. (e). Pub. L. 100–647, § 6133(a), substituted "interest on obligations of the United States which is not portfolio interest (as defined in section 881(c)(2))" for "interest on obligations of the United States", and struck out at end "The preceding sentence shall not apply to any Guam corporation which is treated as not being a foreign corporation by section 881(b)(1) for the taxable year."

1986—Subsec. (a)(1). Pub. L. 99–514, § 701(e)(4)(F), inserted reference to section 55.

Subsec. (e). Pub. L. 99–514, § 1236(a), inserted "The preceding sentence shall not apply to any Guam corporation which is treated as not being a foreign corporation by section 881(b)(1) for the taxable year."

1984—Subsec. (c)(2). Pub. L. 98–369 substituted reference to section "33" for "32" and "34" for "39".

1983—Subsec. (c)(2). Pub. L. 97–424 struck out "and lubricating oil" after "gasoline".

1980—Subsec. (a)(3). Pub. L. 96–499 added par. (3).

1978—Subsec. (a). Pub. L. 95–600 substituted in subsec. (a) heading "Imposition of tax" for "Normal tax and surtax" and in par. (1) heading "In general" for "Imposition of tax".

1976—Subsecs. (c)(1)(A), (2), (d). Pub. L. 94–455 struck out "or his delegate" after "Secretary".

1966—Pub. L. 89–809 substantially revised the income tax treatment of foreign corporations, introduced the concept of taxable income effectively connected with the conduct of a trade or business within the United States into provisions dealing with the imposition of tax, substituted a concept of gross income that included gross income derived from sources within the

United States not effectively connected with the conduct of a trade or business within the United States and gross income effectively connected with the conduct of a trade or business within the United States for a concept of gross income that included only gross income from sources within the United States, and inserted provisions for an election to treat real property income as income connected with United States business, treatment of interest on United States obligations received by banks organized in possessions, and the returns of tax by agents, and inserted cross reference to section 906(b)(1).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 701(e)(4)(F) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99–499, title V, to which it relates, see section 2001(e) of Pub. L. 100–647, set out as a note under section 56 of this title.

Section 6133(c) of Pub. L. 100–647 provided that: ''The amendments made by this subsection [probably means 'this section', which amended sections 882 and 884 of this title] shall apply to taxable years beginning after December 31, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 701(e)(4)(F) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Section 1236(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after November 16, 1985.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97–424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–499 applicable to disposition after June 18, 1980, see section 1125(a) of Pub. L. 96–499, set out as an Effective Date note under section 897 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(F) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 883. Exclusions from gross income

(a) Income of foreign corporations from ships and aircraft

The following items shall not be included in gross income of a foreign corporation, and shall be exempt from taxation under this subtitle:

(1) Ships operated by certain foreign corporations

Gross income derived by a corporation organized in a foreign country from the international operation of a ship or ships if such foreign country grants an equivalent exemption to corporations organized in the United States.

(2) Aircraft operated by certain foreign corporations

Gross income derived by a corporation organized in a foreign country from the international operation of aircraft if such foreign country grants an equivalent exemption to corporations organized in the United States.

(3) Railroad rolling stock of foreign corporations

Earnings derived from payments by a common carrier for the use on a temporary basis (not expected to exceed a total of 90 days in any taxable year) of railroad rolling stock owned by a corporation of a foreign country which grants an equivalent exemption to corporations organized in the United States.

(4) Special rules

The rules of paragraphs (6), (7), and (8) of section 872(b) shall apply for purposes of this subsection.

(5) Special rule for countries which tax on residence basis

For purposes of this subsection, there shall not be taken into account any failure of a foreign country to grant an exemption to a corporation organized in the United States if such corporation is subject to tax by such foreign country on a residence basis pursuant to provisions of foreign law which meets such standards (if any) as the Secretary may prescribe.

(b) Earnings derived from communications satellite system

The earnings derived from the ownership or operation of a communications satellite system by a foreign entity designated by a foreign government to participate in such ownership or operation shall be exempt from taxation under this subtitle, if the United States, through its designated entity, participates in such system pursuant to the Communications Satellite Act of 1962 (47 U.S.C. 701 and following).

(c) Treatment of certain foreign corporations

(1) In general

Paragraph (1) or (2) of subsection (a) (as the case may be) shall not apply to any foreign

corporation if 50 percent or more of the value of the stock of such corporation is owned by individuals who are not residents of such foreign country or another foreign country meeting the requirements of such paragraph.

(2) Treatment of controlled foreign corporations

Paragraph (1) shall not apply to any foreign corporation which is a controlled foreign corporation (as defined in section 957(a)).

(3) Special rules for publicly traded corporations

(A) Exception

Paragraph (1) shall not apply to any corporation which is organized in a foreign country meeting the requirements of paragraph (1) or (2) of subsection (a) (as the case may be) and the stock of which is primarily and regularly traded on an established securities market in such foreign country, another foreign country meeting the requirements of such paragraph, or the United States.

(B) Treatment of stock owned by publicly traded corporation

Any stock in another corporation which is owned (directly or indirectly) by a corporation meeting the requirements of subparagraph (A) shall be treated as owned by individuals who are residents of the foreign country in which the corporation meeting the requirements of subparagraph (A) is organized.

(4) Stock ownership through entities

For purposes of paragraph (1), stock owned (directly or indirectly) by or for a corporation, partnership, trust, or estate shall be treated as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(Aug. 16, 1954, ch. 736, 68A Stat. 283; Pub. L. 90–622, § 1(a), Oct. 22, 1968, 82 Stat. 1311; Pub. L. 94–164, § 6(a), Dec. 23, 1975, 89 Stat. 975; Pub. L. 99–514, title XII, § 1212(c)(3)–(5), Oct. 22, 1986, 100 Stat. 2538; Pub. L. 100–647, title I, § 1012(e)(1), (2)(A), (5), Nov. 10, 1988, 102 Stat. 3499, 3500; Pub. L. 101–239, title VII, § 7811(i)(8)(D), (10), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 108–357, title IV, § 419(b), Oct. 22, 2004, 118 Stat. 1513.)

REFERENCES IN TEXT

The Communications Satellite Act of 1962, referred to in subsec. (b), is Pub. L. 87–624, Aug. 31, 1962, 76 Stat. 419, as amended, which is classified generally to chapter 6 (§ 701 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 47 and Tables.

AMENDMENTS

2004—Subsec. (a)(4). Pub. L. 108–357 substituted ''(6), (7), and (8)'' for ''(5), (6), and (7)''.

1989—Subsec. (a)(4). Pub. L. 101–239, § 7811(i)(8)(D), substituted ''(5), (6), and (7)'' for ''(5) and (6)''.

Subsec. (a)(5). Pub. L. 101–239, § 7811(i)(10), added par. (5).

1988—Subsec. (a)(1), (2). Pub. L. 100–647, § 1012(e)(2)(A), (5), struck out ''to citizens of the United States and'' after ''exemption'' and substituted ''international operation'' for ''operation''.

Subsec. (c)(1). Pub. L. 100–647, § 1012(e)(1)(B), substituted ''Paragraph (1) or (2) of subsection (a) (as the case may be)'' for ''Paragraphs (1) and (2) of subsection (a)'' and ''such paragraph'' for ''such paragraphs (1) and (2)''.

Subsec. (c)(3). Pub. L. 100–647, § 1012(e)(1)(A), substituted ''Special rules'' for ''Exception'' in heading and amended text generally. Prior to amendment, text read as follows: ''Paragraph (1) shall not apply to any foreign corporation—

''(A) the stock of which is primarily and regularly traded on an established securities market in the foreign country in which such corporation is organized, or

''(B) which is wholly owned (either directly or indirectly) by another corporation meeting the requirements of subparagraph (A) and is organized in the same foreign country as such other corporation.''

1986—Subsec. (a)(1). Pub. L. 99–514, § 1212(c)(3), added par. (1) and struck out former par. (1), ships under foreign flag, which read as follows: ''Earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.''

Subsec. (a)(2). Pub. L. 99–514, § 1212(c)(3), added par. (2) and struck out former par. (2), aircraft of foreign registry, which read as follows: ''Earnings derived from the operation of aircraft registered under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.''

Subsec. (a)(4). Pub. L. 99–514, § 1212(c)(4), added par. (4).

Subsec. (c). Pub. L. 99–514, § 1212(c)(5), added subsec. (c).

1975—Subsec. (a)(3). Pub. L. 94–164 added par. (3).

1968—Pub. L. 90–622 designated existing provisions as subsec. (a), added subsec. (a) heading, and added subsec. (b).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to wagers made after Oct. 22, 2004, see section 419(c) of Pub. L. 108–357, set out as a note under section 872 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1212(f) of Pub. L. 99–514, set out as a note under section 863 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 6(b) of Pub. L. 94–164 provided that: ''The amendment made by this section [amending this section] shall apply to payments made after November 18, 1974.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 1(b) of Pub. L. 90–622 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply with respect to taxable years beginning after December 31, 1966.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1212(c)(3)–(5) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 884. Branch profits tax

(a) Imposition of tax

In addition to the tax imposed by section 882 for any taxable year, there is hereby imposed on any foreign corporation a tax equal to 30 percent of the dividend equivalent amount for the taxable year.

(b) Dividend equivalent amount

For purposes of subsection (a), the term ''dividend equivalent amount'' means the foreign corporation's effectively connected earnings and profits for the taxable year adjusted as provided in this subsection:

(1) Reduction for increase in U.S. net equity

If—

(A) the U.S. net equity of the foreign corporation as of the close of the taxable year, exceeds

(B) the U.S. net equity of the foreign corporation as of the close of the preceding taxable year,

the effectively connected earnings and profits for the taxable year shall be reduced (but not below zero) by the amount of such excess.

(2) Increase for decrease in net equity

(A) In general

If—

(i) the U.S. net equity of the foreign corporation as of the close of the preceding taxable year, exceeds

(ii) the U.S. net equity of the foreign corporation as of the close of the taxable year,

the effectively connected earnings and profits for the taxable year shall be increased by the amount of such excess.

(B) Limitation

(i) In general

The increase under subparagraph (A) for any taxable year shall not exceed the accumulated effectively connected earnings and profits as of the close of the preceding taxable year.

(ii) Accumulated effectively connected earnings and profits

For purposes of clause (i), the term ''accumulated effectively connected earnings and profits'' means the excess of—

(I) the aggregate effectively connected earnings and profits for preceding taxable years beginning after December 31, 1986, over

(II) the aggregate dividend equivalent amounts determined for such preceding taxable years.

(c) U.S. net equity

For purposes of this section—

(1) In general

The term ''U.S. net equity'' means—

(A) U.S. assets, reduced (including below zero) by

(B) U.S. liabilities.

(2) U.S. assets and U.S. liabilities

For purposes of paragraph (1)—

(A) U.S. assets

The term ''U.S. assets'' means the money and aggregate adjusted bases of property of the foreign corporation treated as connected with the conduct of a trade or business in the United States under regulations prescribed by the Secretary. For purposes of the preceding sentence, the adjusted basis of any property shall be its adjusted basis for purposes of computing earnings and profits.

(B) U.S. liabilities

The term ''U.S. liabilities'' means the liabilities of the foreign corporation treated as connected with the conduct of a trade or business in the United States under regulations prescribed by the Secretary.

(C) Regulations to be consistent with allocation of deductions

The regulations prescribed under subparagraphs (A) and (B) shall be consistent with the allocation of deductions under section 882(c)(1).

(d) Effectively connected earnings and profits

For purposes of this section—

(1) In general

The term ''effectively connected earnings and profits'' means earnings and profits (without diminution by reason of any distributions made during the taxable year) which are attributable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States.

(2) Exception for certain income

The term ''effectively connected earnings and profits'' shall not include any earnings and profits attributable to—

(A) income not includible in gross income under paragraph (1) or (2) of section 883(a),

(B) income treated as effectively connected with the conduct of a trade or business within the United States under section 921(d) or 926(b) (as in effect before their repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000),

(C) gain on the disposition of a United States real property interest described in section 897(c)(1)(A)(ii),

(D) income treated as effectively connected with the conduct of a trade or business within the United States under section 953(c)(3)(C), or

(E) income treated as effectively connected with the conduct of a trade or business within the United States under section 882(e).

Property and liabilities of the foreign corporation treated as connected with such income under regulations prescribed by the Secretary shall not be taken into account in determining the U.S. assets or U.S. liabilities of the foreign corporation.

(e) Coordination with income tax treaties; etc.

(1) Limitation on treaty exemption

No treaty between the United States and a foreign country shall exempt any foreign corporation from the tax imposed by subsection (a) (or reduce the amount thereof) unless—

(A) such treaty is an income tax treaty, and

(B) such foreign corporation is a qualified resident of such foreign country.

(2) Treaty modifications

If a foreign corporation is a qualified resident of a foreign country with which the United States has an income tax treaty—

(A) the rate of tax under subsection (a) shall be the rate of tax specified in such treaty—

(i) on branch profits if so specified, or

(ii) if not so specified, on dividends paid by a domestic corporation to a corporation resident in such country which wholly owns such domestic corporation, and

(B) any other limitations under such treaty on the tax imposed by subsection (a) shall apply.

(3) Coordination with withholding tax

(A) In general

If a foreign corporation is subject to the tax imposed by subsection (a) for any taxable year (determined after the application of any treaty), no tax shall be imposed by section 871(a), 881(a), 1441, or 1442 on any dividends paid by such corporation out of its earnings and profits for such taxable year.

(B) Limitation on certain treaty benefits

If—

(i) any dividend described in section 861(a)(2)(B) is received by a foreign corporation, and

(ii) subparagraph (A) does not apply to such dividend,

rules similar to the rules of subparagraphs (A) and (B) of subsection (f)(3) shall apply to such dividend.

(4) Qualified resident

For purposes of this subsection—

(A) In general

Except as otherwise provided in this paragraph, the term ''qualified resident'' means, with respect to any foreign country, any foreign corporation which is a resident of such foreign country unless—

(i) 50 percent or more (by value) of the stock of such foreign corporation is owned (within the meaning of section 883(c)(4)) by individuals who are not residents of such foreign country and who are not United States citizens or resident aliens, or

(ii) 50 percent or more of its income is used (directly or indirectly) to meet liabilities to persons who are not residents of such foreign country or citizens or residents of the United States.

(B) Special rule for publicly traded corporations

A foreign corporation which is a resident of a foreign country shall be treated as a qualified resident of such foreign country if—

(i) the stock of such corporation is primarily and regularly traded on an established securities market in such foreign country, or

(ii) such corporation is wholly owned (either directly or indirectly) by another foreign corporation which is organized in such foreign country and the stock of which is so traded.

(C) Corporations owned by publicly traded domestic corporations

A foreign corporation which is a resident of a foreign country shall be treated as a qualified resident of such foreign country if—

(i) such corporation is wholly owned (directly or indirectly) by a domestic corporation, and

(ii) the stock of such domestic corporation is primarily and regularly traded on an established securities market in the United States.

(D) Secretarial authority

The Secretary may, in his sole discretion, treat a foreign corporation as being a qualified resident of a foreign country if such corporation establishes to the satisfaction of the Secretary that such corporation meets such requirements as the Secretary may establish to ensure that individuals who are not residents of such foreign country do not use the treaty between such foreign country and the United States in a manner inconsistent with the purposes of this subsection.

(5) Exception for international organizations

This section shall not apply to an international organization (as defined in section 7701(a)(18)).

(f) Treatment of interest allocable to effectively connected income

(1) In general

In the case of a foreign corporation engaged in a trade or business in the United States (or having gross income treated as effectively connected with the conduct of a trade or business in the United States), for purposes of this subtitle—

(A) any interest paid by such trade or business in the United States shall be treated as if it were paid by a domestic corporation, and

(B) to the extent that the allocable interest exceeds the interest described in sub-

paragraph (A), such foreign corporation shall be liable for tax under section 881(a) in the same manner as if such excess were interest paid to such foreign corporation by a wholly owned domestic corporation on the last day of such foreign corporation's taxable year.

To the extent provided in regulations, subparagraph (A) shall not apply to interest in excess of the amounts reasonably expected to be allocable interest.

(2) Allocable interest

For purposes of this subsection, the term ''allocable interest'' means any interest which is allocable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(3) Coordination with treaties

(A) Payor must be qualified resident

In the case of any interest described in paragraph (1) which is paid or accrued by a foreign corporation, no benefit under any treaty between the United States and the foreign country of which such corporation is a resident shall apply unless—

(i) such treaty is an income tax treaty, and

(ii) such foreign corporation is a qualified resident of such foreign country.

(B) Recipient must be qualified resident

In the case of any interest described in paragraph (1) which is received or accrued by any corporation, no benefit under any treaty between the United States and the foreign country of which such corporation is a resident shall apply unless—

(i) such treaty is an income tax treaty, and

(ii) such foreign corporation is a qualified resident of such foreign country.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing for appropriate adjustments in the determination of the dividend equivalent amount in connection with the distribution to shareholders or transfer to a controlled corporation of the taxpayer's U.S. assets and other adjustments in such determination as are necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 99–514, title XII, §1241(a), Oct. 22, 1986, 100 Stat. 2576; amended Pub. L. 100–647, title I, §1012(q)(1)(A), (2)–(6), (14), title VI, §6133(b), Nov. 10, 1988, 102 Stat. 3522–3525, 3721; Pub. L. 104–188, title I, §1704(f)(3)(A), Aug. 20, 1996, 110 Stat. 1879; Pub. L. 110–172, §11(g)(8), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (d)(2)(B), is Pub. L. 106–519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

PRIOR PROVISIONS

A prior section 884 was renumbered section 885 of this title.

AMENDMENTS

2007—Subsec. (d)(2)(B). Pub. L. 110–172 inserted ''(as in effect before their repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000)'' before comma at end.

1996—Subsec. (f)(1). Pub. L. 104–188, §1704(f)(3)(A)(ii), substituted ''reasonably expected to be allocable interest'' for ''reasonably expected to be deductible under section 882 in computing the effectively connected taxable income of such foreign corporation'' in closing provisions.

Subsec. (f)(1)(B). Pub. L. 104–188, §1704(f)(3)(A)(i), substituted ''to the extent that the allocable interest exceeds the interest described in subparagraph (A)'' for ''to the extent the amount of interest allowable as a deduction under section 882 in computing the effectively connected taxable income of such foreign corporation exceeds the interest described in subparagraph (A)''.

Subsec. (f)(2). Pub. L. 104–188, §1704(f)(3)(A)(iii), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''EFFECTIVELY CONNECTED TAXABLE INCOME.—For purposes of this subsection, the term 'effectively connected taxable income' means taxable income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States.''

1988—Subsec. (b)(2)(B). Pub. L. 100–647, §1012(q)(1)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The increase under subparagraph (A) for any taxable year shall not exceed the aggregate reductions under paragraph (1) for prior taxable years to the extent not previously taken into account under subparagraph (A).''

Subsec. (d)(2)(E). Pub. L. 100–647, §6133(b), added subpar. (E).

Subsec. (e)(1). Pub. L. 100–647, §1012(q)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''No income tax treaty between the United States and a foreign country shall exempt any foreign corporation from the tax imposed by subsection (a) (or reduce the amount thereof) unless—

''(A) such foreign corporation is a qualified resident of such foreign country, or

''(B) such foreign corporation is not a qualified resident of such foreign country but such income tax treaty permits a withholding tax on dividends described in section 861(a)(2)(B) which are paid by such foreign corporation.''

Subsec. (e)(3). Pub. L. 100–647, §1012(q)(2)(B), substituted ''withholding tax'' for ''2nd tier withholding tax'' in heading and amended text generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—If a foreign corporation is not exempt for any taxable year from the tax imposed by subsection (a) by reason of a treaty, no tax shall be imposed by section 871(a), 881(a), 1441, or 1442 on any dividends paid by such corporation during the taxable year.

''(B) LIMITATION ON CERTAIN TREATY BENEFITS.—No foreign corporation which is not a qualified resident of a foreign country shall be entitled to claim benefits under any income tax treaty between the United States and such foreign country with respect to dividends—

''(i) which are paid by such foreign corporation and with respect to which such foreign corporation is otherwise required to deduct and withhold tax under section 1441 or 1442, or

''(ii) which are received by such foreign corporation and are described in section 861(a)(2)(B).''

Subsec. (e)(4)(A)(i), (ii). Pub. L. 100–647, §1012(q)(5), substituted ''50 percent or more'' for ''more than 50 percent'' in cl. (i) and ''citizens or residents of the United States'' for ''the United States'' in cl. (ii).

Subsec. (e)(4)(C), (D). Pub. L. 100–647, §1012(q)(4), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (e)(5). Pub. L. 100–647, § 1012(q)(6), added par. (5).

Subsec. (f)(1). Pub. L. 100–647, § 1012(f)(3)(A), (14), substituted ''this subtitle'' for ''sections 871, 881, 1441, and 1442'' and inserted ''(or having gross income treated as effectively connected with the conduct of a trade or business in the United States)'' after ''United States''.

Pub. L. 100–647, § 1012(q)(2)(C)(i), (3)(B), inserted sentence at end and struck out former last sentence which read as follows: ''Rules similar to the rules of subsection (e)(3)(B) shall apply to interest described in the preceding sentence.''

Subsec. (f)(3). Pub. L. 100–647, § 1012(q)(2)(C)(ii), added par. (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1704(f)(3)(B) of Pub. L. 104–188 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect as if included in the amendments made by section 1241(a) of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(q)(1)(A), (2)–(6), (14) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 6133(b) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, see section 6133(c) of Pub. L. 100–647, set out as a note under section 882 of this title.

EFFECTIVE DATE

Section 1241(e) of Pub. L. 99–514 provided that: ''The amendments made by this section [enacting section 884 of this title, renumbering former section 884 as section 885 of this title, and amending sections 861 and 906 of this title] shall apply to taxable years beginning after December 31, 1986.''

DETERMINATION OF EARNINGS AND PROFITS OF FOREIGN CORPORATIONS

Section 1012(q)(1)(B) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, § 7811(i)(5), Dec. 19, 1989, 103 Stat. 2410, provided that: ''For purposes of applying section 884 of the 1986 Code, the earnings and profits of any corporation shall be determined without regard to any increase in earnings and profits under sections 1023(e)(3)(C) [section 1023(e)(3)(C) of Pub. L. 99–514, set out as an Effective Date note under section 846 of this title] and 1021(c)(2)(C) of the Reform Act [Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 832 of this title] or arising from section 832(b)(4)(C) of the 1986 Code.''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1241(a) of Pub. L. 99–514 (enacting this section) to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 885. Cross references

(1) For special provisions relating to foreign corporations carrying on an insurance business within the United States, see section 842.

(2) For rules applicable in determining whether any foreign corporation is engaged in trade or business within the United States, see section 864(b).

(3) For adjustment of tax in case of corporations of certain foreign countries, see section 896.

(4) For allowance of credit against the tax in case of a foreign corporation having income effectively connected with the conduct of a trade or business within the United States, see section 906.

(5) For withholding at source of tax on income of foreign corporations, see section 1442.

(Aug. 16, 1954, ch. 736, 68A Stat. 283, § 884; Pub. L. 89–809, title I, § 104(m)(1), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 91–172, title I, § 101(j)(21), Dec. 30, 1969, 83 Stat. 528; renumbered § 885, Pub. L. 99–514, title XII, § 1241(a), Oct. 22, 1986, 100 Stat. 2576.)

AMENDMENTS

1986—Pub. L. 99–514 renumbered section 884 of this title as this section.

1969—Pub. L. 91–172 redesignated pars. (2) to (6) as (1) to (5), respectively. Former par. (1), referring to section 512(a), was struck out.

1966—Par. (1). Pub. L. 89–809 redesignated par. (4) as (1). Former par. (1) redesignated (6).

Par. (2). Pub. L. 89–809 redesignated par. (3) as (2) and substituted ''foreign corporations carrying on an insurance business within the United States, see section 842'' for ''foreign insurance companies, see subchapter L (sec. 801 and following)''. Former par. (2) redesignated (3).

Par. (3). Pub. L. 89–809 redesignated former par. (2) as (3) and, in par. (3) as so redesignated, substituted ''section 864(b)'' for ''section 871(c)''. Former par. (3) redesignated (2).

Pars. (4), (5). Pub. L. 89–809 added pars. (4) and (5). Former par. (4) redesignated (1).

Par. (6). Pub. L. 89–809 redesignated former par. (1) as (6).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

SUBPART C—TAX ON GROSS TRANSPORTATION INCOME

Sec.
887. Imposition of tax on gross transportation income of nonresident aliens and foreign corporations.

§ 887. Imposition of tax on gross transportation income of nonresident aliens and foreign corporations

(a) Imposition of tax

In the case of any nonresident alien individual or foreign corporation, there is hereby imposed for each taxable year a tax equal to 4 percent of such individual's or corporation's United States source gross transportation income for such taxable year.

(b) United States source gross transportation income

(1) In general

Except as provided in paragraphs (2) and (3), the term ''United States source gross transportation income'' means any gross income

which is transportation income (as defined in section 863(c)(3)) to the extent such income is treated as from sources in the United States under section 863(c)(2). To the extent provided in regulations, such term does not include any income of a kind to which an exemption under paragraph (1) or (2) of section 883(a) would not apply.

(2) Exception for certain income effectively connected with business in the United States

The term ''United States source gross transportation income'' shall not include any income taxable under section 871(b) or 882.

(3) Exception for certain income taxable in possessions

The term ''United States source gross transportation income'' does not include any income taxable in a possession of the United States under the provisions of this title as made applicable in such possession.

(4) Determination of effectively connected income

For purposes of this chapter, United States source gross transportation income of any taxpayer shall not be treated as effectively connected with the conduct of a trade or business in the United States unless—

(A) the taxpayer has a fixed place of business in the United States involved in the earning of United States source gross transportation income, and

(B) substantially all of the United States source gross transportation income (determined without regard to paragraph (2)) of the taxpayer is attributable to regularly scheduled transportation (or, in the case of income from the leasing of a vessel or aircraft, is attributable to a fixed place of business in the United States).

(c) Coordination with other provisions

Any income taxable under this section shall not be taxable under section 871, 881, or 882.

(Added Pub. L. 99–514, title XII, §1212(b)(1), Oct. 22, 1986, 100 Stat. 2537; amended Pub. L. 100–647, title I, §1012(e)(6), Nov. 10, 1988, 102 Stat. 3500; Pub. L. 101–239, title VII, §7811(i)(8)(A), (B), (9), Dec. 19, 1989, 103 Stat. 2410, 2411.)

AMENDMENTS

1989—Subsec. (b)(1). Pub. L. 101–239, §7811(i)(8)(B), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''.

Subsec. (b)(3). Pub. L. 101–239, §7811(i)(8)(A), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 101–239, §7811(i)(8)(A), (9), redesignated former par. (3) as (4) and substituted ''United States source gross transportation income'' for ''transportation income'' in introductory provisions and in subpar. (A).

1988—Subsec. (b)(1). Pub. L. 100–647 substituted ''under section 863(c)(2)'' for ''under section 863(c)'' and inserted at end ''To the extent provided in regulations, such term does not include any income of a kind to which an exemption under paragraph (1) or (2) of section 883(a) would not apply.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, see section 1212(f) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 863 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1212(b)(1) of Pub. L. 99–514 (enacting this section) to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

SUBPART D—MISCELLANEOUS PROVISIONS

Sec.
891. Doubling of rates of tax on citizens and corporations of certain foreign countries.
892. Income of foreign governments and of international organizations.
893. Compensation of employees of foreign governments or international organizations.
894. Income affected by treaty.
895. Income derived by a foreign central bank of issue from obligations of the United States or from bank deposits.
896. Adjustment of tax on nationals, residents, and corporations of certain foreign countries.
897. Disposition of investment in United States real property.
898. Taxable year of certain foreign corporations.

AMENDMENTS

1989—Pub. L. 101–239, title VII, §7401(c), Dec. 19, 1989, 103 Stat. 2357, added item 898.

1986—Pub. L. 99–514, title XII, §1212(b)(1), Oct. 22, 1986, 100 Stat. 2537, redesignated former subpart (C) as (D).

1980—Pub. L. 96–499, title XI, §1122(b), Dec. 5, 1980, 94 Stat. 2687, added item 897.

1966—Pub. L. 89–809, title I, §§102(a)(4)(B), 105(c), Nov. 13, 1966, 80 Stat. 1543, 1565, substituted ''affected by treaty'' for ''exempt under treaty'' in item 894, inserted ''or from bank deposits'' in item 895, and added item 896.

1961—Pub. L. 87–29, §1(b), May 4, 1961, 75 Stat. 64, added item 895.

§891. Doubling of rates of tax on citizens and corporations of certain foreign countries

Whenever the President finds that, under the laws of any foreign country, citizens or corporations of the United States are being subjected to discriminatory or extraterritorial taxes, the President shall so proclaim and the rates of tax imposed by sections 1, 3, 11, 801, 831, 852, 871, and 881 shall, for the taxable year during which such proclamation is made and for each taxable year thereafter, be doubled in the case of each citizen

and corporation of such foreign country; but the tax at such doubled rate shall be considered as imposed by such sections as the case may be. In no case shall this section operate to increase the taxes imposed by such sections (computed without regard to this section) to an amount in excess of 80 percent of the taxable income of the taxpayer (computed without regard to the deductions allowable under section 151 and under part VIII of subchapter B). Whenever the President finds that the laws of any foreign country with respect to which the President has made a proclamation under the preceding provisions of this section have been modified so that discriminatory and extraterritorial taxes applicable to citizens and corporations of the United States have been removed, he shall so proclaim, and the provisions of this section providing for doubled rates of tax shall not apply to any citizen or corporation of such foreign country with respect to any taxable year beginning after such proclamation is made.

(Aug. 16, 1954, ch. 736, 68A Stat. 283; Mar. 13, 1956, ch. 83, § 5(6), 70 Stat. 49; Pub. L. 86–69, § 3(f)(1), June 25, 1959, 73 Stat. 140; Pub. L. 98–369, div. A, title II, § 211(b)(12), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title X, § 1024(c)(13), Oct. 22, 1986, 100 Stat. 2408.)

AMENDMENTS

1986—Pub. L. 99–514 struck out reference to section 821.

1984—Pub. L. 98–369 substituted ''801'' for ''802''.

1959—Pub. L. 86–69 struck out reference to section 811.

1956—Act Mar. 13, 1956, inserted reference to section 811.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1024(e) of Pub. L. 99–514, set out as a note under section 831 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out an Effective Date note under section 381 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Mar. 13, 1956, applicable only to taxable years beginning after Dec. 31, 1954, see section 6 of act Mar. 13, 1956, set out as a note under section 316 of this title.

§ 892. Income of foreign governments and of international organizations

(a) Foreign governments

(1) In general

The income of foreign governments received from—

(A) investments in the United States in—

(i) stocks, bonds, or other domestic securities owned by such foreign governments, or

(ii) financial instruments held in the execution of governmental financial or monetary policy, or

(B) interest on deposits in banks in the United States of moneys belonging to such foreign governments,

shall not be included in gross income and shall be exempt from taxation under this subtitle.

(2) Income received directly or indirectly from commercial activities

(A) In general

Paragraph (1) shall not apply to any income—

(i) derived from the conduct of any commercial activity (whether within or outside the United States),

(ii) received by a controlled commercial entity or received (directly or indirectly) from a controlled commercial entity, or

(iii) derived from the disposition of any interest in a controlled commercial entity.

(B) Controlled commercial entity

For purposes of subparagraph (A), the term ''controlled commercial entity'' means any entity engaged in commercial activities (whether within or outside the United States) if the government—

(i) holds (directly or indirectly) any interest in such entity which (by value or voting interest) is 50 percent or more of the total of such interests in such entity, or

(ii) holds (directly or indirectly) any other interest in such entity which provides the foreign government with effective control of such entity.

For purposes of the preceding sentence, a central bank of issue shall be treated as a controlled commercial entity only if engaged in commercial activities within the United States.

(3) Treatment as resident

For purposes of this title, a foreign government shall be treated as a corporate resident of its country. A foreign government shall be so treated for purposes of any income tax treaty obligation of the United States if such government grants equivalent treatment to the Government of the United States.

(b) International organizations

The income of international organizations received from investments in the United States in stocks, bonds, or other domestic securities owned by such international organizations, or from interest on deposits in banks in the United States of moneys belonging to such international organizations, or from any other source within the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.

(c) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Aug. 16, 1954, ch. 736, 68A Stat. 284; Pub. L. 99–514, title XII, § 1247(a), Oct. 22, 1986, 100 Stat. 2583; Pub. L. 100–647, title I, § 1012(t)(1)–(3), Nov. 10, 1988, 102 Stat. 3527; Pub. L. 101–508, title XI, § 11704(a)(35), Nov. 5, 1990, 104 Stat. 1388–519.)

AMENDMENTS

1990—Subsec. (a)(2)(A). Pub. L. 101–508 made clarifying amendment to Pub. L. 100–647, § 1012(t)(1). See 1988 Amendment note below.

1988—Subsec. (a)(2)(A). Pub. L. 100–647, § 1012(t)(1), (2), as amended by Pub. L. 101–508, amended cl. (ii) generally and added cl. (iii). Prior to amendment, cl. (ii) read as follows: ''received from or by a controlled commercial entity.''

Subsec. (a)(3). Pub. L. 100–647, § 1012(t)(3), added par. (3).

1986—Pub. L. 99–514 amended section generally. Prior to amendment, section read as follows: ''The income of foreign governments or international organizations received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments or by international organizations, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments or international organizations, or from any other source within the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1247(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to amounts received on or after July 1, 1986, except that no amount shall be required to be deducted and withheld by reason of the amendment made by subsection (a) from any payment made before the date of the enactment of this Act [Oct. 22, 1986].''

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For nonapplication of amendment by section 1247(a) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(3), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

§ 893. Compensation of employees of foreign governments or international organizations

(a) Rule for exclusion

Wages, fees, or salary of any employee of a foreign government or of an international organization (including a consular or other officer, or a nondiplomatic representative), received as compensation for official services to such government or international organization shall not be included in gross income and shall be exempt from taxation under this subtitle if—

(1) such employee is not a citizen of the United States, or is a citizen of the Republic of the Philippines (whether or not a citizen of the United States); and

(2) in the case of an employee of a foreign government, the services are of a character similar to those performed by employees of the Government of the United States in foreign countries; and

(3) in the case of an employee of a foreign government, the foreign government grants an equivalent exemption to employees of the Government of the United States performing similar services in such foreign country.

(b) Certificate by Secretary of State

The Secretary of State shall certify to the Secretary of the Treasury the names of the foreign countries which grant an equivalent exemption to the employees of the Government of the United States performing services in such foreign countries, and the character of the services performed by employees of the Government of the United States in foreign countries.

(c) Limitation on exclusion

Subsection (a) shall not apply to—

(1) any employee of a controlled commercial entity (as defined in section 892(a)(2)(B)), or

(2) any employee of a foreign government whose services are primarily in connection with a commercial activity (whether within or outside the United States) of the foreign government.

(Aug. 16, 1954, ch. 736, 68A Stat. 284; Pub. L. 100–647, title I, § 1012(t)(4), Nov. 10, 1988, 102 Stat. 3527.)

AMENDMENTS

1988—Subsec. (c). Pub. L. 100–647 added subsec. (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

§ 894. Income affected by treaty

(a) Treaty provisions

(1) In general

The provisions of this title shall be applied to any taxpayer with due regard to any treaty obligation of the United States which applies to such taxpayer.

(2) Cross reference

For relationship between treaties and this title, see section 7852(d).

(b) Permanent establishment in United States

For purposes of applying any exemption from, or reduction of, any tax provided by any treaty to which the United States is a party with respect to income which is not effectively connected with the conduct of a trade or business within the United States, a nonresident alien individual or a foreign corporation shall be deemed not to have a permanent establishment in the United States at any time during the taxable year. This subsection shall not apply in respect of the tax computed under section 877(b).

(c) Denial of treaty benefits for certain payments through hybrid entities

(1) Application to certain payments

A foreign person shall not be entitled under any income tax treaty of the United States with a foreign country to any reduced rate of any withholding tax imposed by this title on an item of income derived through an entity which is treated as a partnership (or is otherwise treated as fiscally transparent) for purposes of this title if—

(A) such item is not treated for purposes of the taxation laws of such foreign country as an item of income of such person,

(B) the treaty does not contain a provision addressing the applicability of the treaty in the case of an item of income derived through a partnership, and

(C) the foreign country does not impose tax on a distribution of such item of income from such entity to such person.

(2) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to determine the extent to which a taxpayer to which paragraph (1) does not apply shall not be entitled to benefits under any income tax treaty of the United States with respect to any payment received by, or income attributable to any activities of, an entity organized in any jurisdiction (including the United States) that is treated as a partnership or is otherwise treated as fiscally transparent for purposes of this title (including a common investment trust under section 584, a grantor trust, or an entity that is disregarded for purposes of this title) and is treated as fiscally nontransparent for purposes of the tax laws of the jurisdiction of residence of the taxpayer.

(Aug. 16, 1954, ch. 736, 68A Stat. 284; Pub. L. 89–809, title I, § 105(a), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 100–647, title I, § 1012(aa)(6), Nov. 10, 1988, 102 Stat. 3533; Pub. L. 105–34, title X, § 1054(a), Aug. 5, 1997, 111 Stat. 943.)

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34 added subsec. (c).

1988—Subsec. (a). Pub. L. 100–647 substituted ''Treaty provisions'' for ''Income affected by treaty'' in heading and amended text generally. Prior to amendment, text read as follows: ''Income of any kind, to the extent required by any treaty obligation of the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.''

1966—Pub. L. 89–809 designated existing provisions as subsec. (a), added subsec. (b), and substituted ''affected by treaty'' for ''exempt under treaty'' in section catchline.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1054(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply upon the date of enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 105(d) of Pub. L. 89–809 provided that: ''The amendments made by this section (other than subsections (d) and (f)) [amending this section and enacting section 896 of this title] shall apply with respect to taxable years beginning after December 31, 1966.''

§ 895. Income derived by a foreign central bank of issue from obligations of the United States or from bank deposits

Income derived by a foreign central bank of issue from obligations of the United States or of any agency or instrumentality thereof (including beneficial interests, participations, and other instruments issued under section 302(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717)) which are owned by such foreign central bank of issue, or derived from interest on deposits with persons carrying on the banking business, shall not be included in gross income and shall be exempt from taxation under this subtitle unless such obligations or deposits are held for, or used in connection with, the conduct of commercial banking functions or other commercial activities. For purposes of the preceding sentence the Bank for International Settlements shall be treated as a foreign central bank of issue.

(Added Pub. L. 87–29, § 1(a), May 4, 1961, 75 Stat. 64; amended Pub. L. 89–809, title I, § 102(a)(4)(A), Nov. 13, 1966, 80 Stat. 1543.)

AMENDMENTS

1966—Pub. L. 89–809 exempted income derived from obligations of agencies or instrumentalities of the United States and income derived from interest on deposits with persons carrying on the banking business, inserted ''(including beneficial interests, participations, and other instruments issued under section 302(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717)),'' and inserted sentence requiring the Bank for International Settlements to be treated as a foreign central bank of issue.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, except that in applying section 864(c)(4)(B)(iii) of this title with respect to a binding contract entered into on or before Feb. 24, 1966, activities in the United States on or before such date in negotiating or carrying out such contract shall not be taken into account, see section 102(e)(1) of Pub. L. 89–809, set out as a note under section 861 of this title.

EFFECTIVE DATE

Section 1(c) of Pub. L. 87–29 provided that: ''The amendments made by subsections (a) and (b) [enacting this section and amending analysis preceding section 891 of this title] shall be effective with respect to income received in taxable years beginning after December 31, 1960.''

§ 896. Adjustment of tax on nationals, residents, and corporations of certain foreign countries

(a) Imposition of more burdensome taxes by foreign country

Whenever the President finds that—

(1) under the laws of any foreign country, considering the tax system of such foreign country, citizens of the United States not residents of such foreign country or domestic corporations are being subjected to more burdensome taxes, on any item of income received by such citizens or corporations from sources within such foreign country, than taxes imposed by the provisions of this subtitle on similar income derived from sources within the United States by residents or corporations of such foreign country,

(2) such foreign country, when requested by the United States to do so, has not acted to revise or reduce such taxes so that they are no more burdensome than taxes imposed by the provisions of this subtitle on similar income

derived from sources within the United States by residents or corporations of such foreign country, and

(3) it is in the public interest to apply pre-1967 tax provisions in accordance with the provisions of this subsection to residents or corporations of such foreign country,

the President shall proclaim that the tax on such similar income derived from sources within the United States by residents or corporations of such foreign country shall, for taxable years beginning after such proclamation, be determined under this subtitle without regard to amendments made to this subchapter and chapter 3 on or after the date of enactment of this section.

(b) Imposition of discriminatory taxes by foreign country

Whenever the President finds that—

(1) under the laws of any foreign country, citizens of the United States or domestic corporations (or any class of such citizens or corporations) are, with respect to any item of income, being subjected to a higher effective rate of tax than are nationals, residents, or corporations of such foreign country (or a similar class of such nationals, residents, or corporations) under similar circumstances;

(2) such foreign country, when requested by the United States to do so, has not acted to eliminate such higher effective rate of tax; and

(3) it is in the public interest to adjust, in accordance with the provisions of this subsection, the effective rate of tax imposed by this subtitle on similar income of nationals, residents, or corporations of such foreign country (or such similar class of such nationals, residents, or corporations),

the President shall proclaim that the tax on similar income of nationals, residents, or corporations of such foreign country (or such similar class of such nationals, residents, or corporations) shall, for taxable years beginning after such proclamation, be adjusted so as to cause the effective rate of tax imposed by this subtitle on such similar income to be substantially equal to the effective rate of tax imposed by such foreign country on such item of income of citizens of the United States or domestic corporations (or such class of citizens or corporations). In implementing a proclamation made under this subsection, the effective rate of tax imposed by this subtitle on an item of income may be adjusted by the disallowance, in whole or in part, of any deduction, credit, or exemption which would otherwise be allowed with respect to that item of income or by increasing the rate of tax otherwise applicable to that item of income.

(c) Alleviation of more burdensome or discriminatory taxes

Whenever the President finds that—

(1) the laws of any foreign country with respect to which the President has made a proclamation under subsection (a) have been modified so that citizens of the United States not residents of such foreign country or domestic corporations are no longer subject to more burdensome taxes on the item of income derived by such citizens or corporations from sources within such foreign country, or

(2) the laws of any foreign country with respect to which the President has made a proclamation under subsection (b) have been modified so that citizens of the United States or domestic corporations (or any class of such citizens or corporations) are no longer subject to a higher effective rate of tax on the item of income,

he shall proclaim that the tax imposed by this subtitle on the similar income of nationals, residents, or corporations of such foreign country shall, for any taxable year beginning after such proclamation, be determined under this subtitle without regard to such subsection.

(d) Notification of Congress required

No proclamation shall be issued by the President pursuant to this section unless, at least 30 days prior to such proclamation, he has notified the Senate and the House of Representatives of his intention to issue such proclamation.

(e) Implementation by regulations

The Secretary shall prescribe such regulations as he deems necessary or appropriate to implement this section.

(Added Pub. L. 89–809, title I, § 105(b), Nov. 13, 1966, 80 Stat. 1563; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in the provisions following subsec. (a)(3), is the date of enactment of Pub. L. 89–809, which was approved Nov. 13, 1966.

AMENDMENTS

1976—Subsec. (e). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1966, see section 105(d) of Pub. L. 89–809, set out as an Effective Date of 1966 Amendment note under section 894 of this title.

§ 897. Disposition of investment in United States real property

(a) General rule

(1) Treatment as effectively connected with United States trade or business

For purposes of this title, gain or loss of a nonresident alien individual or a foreign corporation from the disposition of a United States real property interest shall be taken into account—

(A) in the case of a nonresident alien individual, under section 871(B)(1), or

(B) in the case of a foreign corporation, under section 882(a)(1),

as if the taxpayer were engaged in a trade or business within the United States during the taxable year and as if such gain or loss were effectively connected with such trade or business.

(2) Minimum tax on nonresident alien individuals

(A) In general

In the case of any nonresident alien individual, the taxable excess for purposes of

section 55(b)(1)(A) shall not be less than the lesser of—

(i) the individual's alternative minimum taxable income (as defined in section 55(b)(2)) for the taxable year, or

(ii) the individual's net United States real property gain for the taxable year.

(B) Net United States real property gain

For purposes of subparagraph (A), the term ''net United States real property gain'' means the excess of—

(i) the aggregate of the gains for the taxable year from dispositions of United States real property interests, over

(ii) the aggregate of the losses for the taxable year from dispositions of such interests.

(b) Limitation on losses of individuals

In the case of an individual, a loss shall be taken into account under subsection (a) only to the extent such loss would be taken into account under section 165(c) (determined without regard to subsection (a) of this section).

(c) United States real property interest

For purposes of this section—

(1) United States real property interest

(A) In general

Except as provided in subparagraph (B), the term ''United States real property interest'' means—

(i) an interest in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the Virgin Islands, and

(ii) any interest (other than an interest solely as a creditor) in any domestic corporation unless the taxpayer establishes (at such time and in such manner as the Secretary by regulations prescribes) that such corporation was at no time a United States real property holding corporation during the shorter of—

(I) the period after June 18, 1980, during which the taxpayer held such interest, or

(II) the 5-year period ending on the date of the disposition of such interest.

(B) Exclusion for interest in certain corporations

The term ''United States real property interest'' does not include any interest in a corporation if—

(i) as of the date of the disposition of such interest, such corporation did not hold any United States real property interests, and

(ii) all of the United States real property interests held by such corporation at any time during the shorter of the periods described in subparagraph (A)(ii)—

(I) were disposed of in transactions in which the full amount of the gain (if any) was recognized, or

(II) ceased to be United States real property interests by reason of the application of this subparagraph to 1 or more other corporations.

(2) United States real property holding corporation

The term ''United States real property holding corporation'' means any corporation if—

(A) the fair market value of its United States real property interests equals or exceeds 50 percent of

(B) the fair market value of—

(i) its United States real property interests,

(ii) its interests in real property located outside the United States, plus

(iii) any other of its assets which are used or held for use in a trade or business.

(3) Exception for stock regularly traded on established securities markets

If any class of stock of a corporation is regularly traded on an established securities market, stock of such class shall be treated as a United States real property interest only in the case of a person who, at some time during the shorter of the periods described in paragraph (1)(A)(ii), held more than 5 percent of such class of stock.

(4) Interests held by foreign corporations and by partnerships, trusts, and estates

For purposes of determining whether any corporation is a United States real property holding corporation—

(A) Foreign corporations

Paragraph (1)(A)(ii) shall be applied by substituting ''any corporation (whether foreign or domestic)'' for ''any domestic corporation''.

(B) Interests held by partnerships, etc.

Under regulations prescribed by the Secretary, assets held by a partnership, trust, or estate shall be treated as held proportionately by its partners or beneficiaries. Any asset treated as held by a partner or beneficiary by reason of this subparagraph which is used or held for use by the partnership, trust, or estate in a trade or business shall be treated as so used or held by the partner or beneficiary. Any asset treated as held by a partner or beneficiary by reason of this subparagraph shall be so treated for purposes of applying this subparagraph successively to partnerships, trusts, or estates which are above the first partnership, trust, or estate in a chain thereof.

(5) Treatment of controlling interests

(A) In general

Under regulations, for purposes of determining whether any corporation is a United States real property holding corporation, if any corporation (hereinafter in this paragraph referred to as the ''first corporation'') holds a controlling interest in a second corporation—

(i) the stock which the first corporation holds in the second corporation shall not be taken into account,

(ii) the first corporation shall be treated as holding a portion of each asset of the second corporation equal to the percentage of the fair market value of the stock of the second corporation represented by the stock held by the first corporation, and

(iii) any asset treated as held by the first corporation by reason of clause (ii) which

is used or held for use by the second corporation in a trade or business shall be treated as so used or held by the first corporation.

Any asset treated as held by the first corporation by reason of the preceding sentence shall be so treated for purposes of applying the preceding sentence successively to corporations which are above the first corporation in a chain of corporations.

(B) Controlling interest

For purposes of subparagraph (A), the term ''controlling interest'' means 50 percent or more of the fair market value of all classes of stock of a corporation.

(6) Other special rules

(A) Interest in real property

The term ''interest in real property'' includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon.

(B) Real property includes associated personal property

The term ''real property'' includes movable walls, furnishings, and other personal property associated with the use of the real property.

(C) Constructive ownership rules

For purposes of determining under paragraph (3) whether any person holds more than 5 percent of any class of stock and of determining under paragraph (5) whether a person holds a controlling interest in any corporation, section 318(a) shall apply (except that paragraphs (2)(C) and (3)(C) of section 318(a) shall be applied by substituting ''5 percent'' for ''50 percent'').

(d) Treatment of distributions by foreign corporations

(1) In general

Except to the extent otherwise provided in regulations, notwithstanding any other provision of this chapter, gain shall be recognized by a foreign corporation on the distribution (including a distribution in liquidation or redemption) of a United States real property interest in an amount equal to the excess of the fair market value of such interest (as of the time of the distribution) over its adjusted basis.

(2) Exceptions

Gain shall not be recognized under paragraph (1)—

(A) if—

(i) at the time of the receipt of the distributed property, the distributee would be subject to taxation under this chapter on a subsequent disposition of the distributed property, and

(ii) the basis of the distributed property in the hands of the distributee is no greater than the adjusted basis of such property before the distribution, increased by the amount of gain (if any) recognized by the distributing corporation, or

(B) if such nonrecognition is provided in regulations prescribed by the Secretary under subsection (e)(2).

(e) Coordination with nonrecognition provisions

(1) In general

Except to the extent otherwise provided in subsection (d) and paragraph (2) of this subsection, any nonrecognition provision shall apply for purposes of this section to a transaction only in the case of an exchange of a United States real property interest for an interest the sale of which would be subject to taxation under this chapter.

(2) Regulations

The Secretary shall prescribe regulations (which are necessary or appropriate to prevent the avoidance of Federal income taxes) providing—

(A) the extent to which nonrecognition provisions shall, and shall not, apply for purposes of this section, and

(B) the extent to which—

(i) transfers of property in reorganization, and

(ii) changes in interests in, or distributions from, a partnership, trust, or estate,

shall be treated as sales of property at fair market value.

(3) Nonrecognition provision defined

For purposes of this subsection, the term ''nonrecognition provision'' means any provision of this title for not recognizing gain or loss.

[(f) Repealed. Pub. L. 104–188, title I, § 1702(g)(2), Aug. 20, 1996, 110 Stat. 1873]

(g) Special rule for sales of interest in partnerships, trusts, and estates

Under regulations prescribed by the Secretary, the amount of any money, and the fair market value of any property, received by a nonresident alien individual or foreign corporation in exchange for all or part of its interest in a partnership, trust, or estate shall, to the extent attributable to United States real property interests, be considered as an amount received from the sale or exchange in the United States of such property.

(h) Special rules for certain investment entities

For purposes of this section—

(1) Look-through of distributions

Any distribution by a qualified investment entity to a nonresident alien individual, a foreign corporation, or other qualified investment entity shall, to the extent attributable to gain from sales or exchanges by the qualified investment entity of United States real property interests, be treated as gain recognized by such nonresident alien individual, foreign corporation, or other qualified investment entity from the sale or exchange of a United States real property interest. Notwithstanding the preceding sentence, any distribution by a qualified investment entity to a non-

resident alien individual or a foreign corporation with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if such individual or corporation did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of such distribution.

(2) Sale of stock in domestically controlled entity not taxed

The term ''United States real property interest'' does not include any interest in a domestically controlled qualified investment entity.

(3) Distributions by domestically controlled qualified investment entities

In the case of a domestically controlled qualified investment entity, rules similar to the rules of subsection (d) shall apply to the foreign ownership percentage of any gain.

(4) Definitions

(A) Qualified investment entity

(i) In general

The term ''qualified investment entity'' means—

(I) any real estate investment trust, and

(II) any regulated investment company which is a United States real property holding corporation or which would be a United States real property holding corporation if the exceptions provided in subsections (c)(3) and (h)(2) did not apply to interests in any real estate investment trust or regulated investment company.

(ii) Termination

Clause (i)(II) shall not apply after December 31, 2011. Notwithstanding the preceding sentence, an entity described in clause (i)(II) shall be treated as a qualified investment entity for purposes of applying paragraphs (1) and (5) and section 1445 with respect to any distribution by the entity to a nonresident alien individual or a foreign corporation which is attributable directly or indirectly to a distribution to the entity from a real estate investment trust.

(B) Domestically controlled

The term ''domestically controlled qualified investment entity'' means any qualified investment entity in which at all times during the testing period less than 50 percent in value of the stock was held directly or indirectly by foreign persons.

(C) Foreign ownership percentage

The term ''foreign ownership percentage'' means that percentage of the stock of the qualified investment entity which was held (directly or indirectly) by foreign persons at the time during the testing period during which the direct and indirect ownership of stock by foreign persons was greatest.

(D) Testing period

The term ''testing period'' means whichever of the following periods is the shortest:

(i) the period beginning on June 19, 1980, and ending on the date of the disposition or of the distribution, as the case may be,

(ii) the 5-year period ending on the date of the disposition or of the distribution, as the case may be, or

(iii) the period during which the qualified investment entity was in existence.

(5) Treatment of certain wash sale transactions

(A) In general

If an interest in a domestically controlled qualified investment entity is disposed of in an applicable wash sale transaction, the taxpayer shall, for purposes of this section, be treated as having gain from the sale or exchange of a United States real property interest in an amount equal to the portion of the distribution described in subparagraph (B) with respect to such interest which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1).

(B) Applicable wash sales transaction

For purposes of this paragraph—

(i) In general

The term ''applicable wash sales transaction'' means any transaction (or series of transactions) under which a nonresident alien individual, foreign corporation, or qualified investment entity—

(I) disposes of an interest in a domestically controlled qualified investment entity during the 30-day period preceding the ex-dividend date of a distribution which is to be made with respect to the interest and any portion of which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1), and

(II) acquires, or enters into a contract or option to acquire, a substantially identical interest in such entity during the 61-day period beginning with the 1st day of the 30-day period described in subclause (I).

For purposes of subclause (II), a nonresident alien individual, foreign corporation, or qualified investment entity shall be treated as having acquired any interest acquired by a person related (within the meaning of section 267(b) or 707(b)(1)) to the individual, corporation, or entity, and any interest which such person has entered into any contract or option to acquire.

(ii) Application to substitute dividend and similar payments

Subparagraph (A) shall apply to—

(I) any substitute dividend payment (within the meaning of section 861), or

(II) any other similar payment specified in regulations which the Secretary determines necessary to prevent avoidance of the purposes of this paragraph.

The portion of any such payment treated by the taxpayer as gain from the sale or

exchange of a United States real property interest under subparagraph (A) by reason of this clause shall be equal to the portion of the distribution such payment is in lieu of which would have been so treated but for the transaction giving rise to such payment.

(iii) Exception where distribution actually received

A transaction shall not be treated as an applicable wash sales transaction if the nonresident alien individual, foreign corporation, or qualified investment entity receives the distribution described in clause (i)(I) with respect to either the interest which was disposed of, or acquired, in the transaction.

(iv) Exception for certain publicly traded stock

A transaction shall not be treated as an applicable wash sales transaction if it involves the disposition of any class of stock in a qualified investment entity which is regularly traded on an established securities market within the United States but only if the nonresident alien individual, foreign corporation, or qualified investment entity did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of the distribution described in clause (i)(I).

(i) Election by foreign corporation to be treated as domestic corporation

(1) In general

If—

(A) a foreign corporation holds a United States real property interest, and

(B) under any treaty obligation of the United States the foreign corporation is entitled to nondiscriminatory treatment with respect to that interest,

then such foreign corporation may make an election to be treated as a domestic corporation for purposes of this section, section 1445, and section 6039C.

(2) Revocation only with consent

Any election under paragraph (1), once made, may be revoked only with the consent of the Secretary.

(3) Making of election

An election under paragraph (1) may be made only—

(A) if all of the owners of all classes of interests (other than interests solely as a creditor) in the foreign corporation at the time of the election consent to the making of the election and agree that gain, if any, from the disposition of such interest after June 18, 1980, which would be taken into account under subsection (a) shall be taxable notwithstanding any provision to the contrary in a treaty to which the United States is a party, and

(B) subject to such other conditions as the Secretary may prescribe by regulations with respect to the corporation or its shareholders.

In the case of a class of interest (other than an interest solely as a creditor) which is regularly traded on an established securities market, the consent described in subparagraph (A) need only be made by any person if such person held more than 5 percent of such class of interest at some time during the shorter of the periods described in subsection (c)(1)(A)(ii). The constructive ownership rules of subsection (c)(6)(C) shall apply in determining whether a person held more than 5 percent of a class of interest.

(4) Exclusive method of claiming nondiscrimination

The election provided by paragraph (1) shall be the exclusive remedy for any person claiming discriminatory treatment with respect to this section, section 1145, and section 6039C.

(j) Certain contributions to capital

Except to the extent otherwise provided in regulations, gain shall be recognized by a nonresident alien individual or foreign corporation on the transfer of a United States real property interest to a foreign corporation if the transfer is made as paid in surplus or as a contribution to capital, in the amount of the excess of—

(1) the fair market value of such property transferred, over

(2) the sum of—

(A) the adjusted basis of such property in the hands of the transferor, plus

(B) the amount of gain, if any, recognized to the transferor under any other provision at the time of the transfer.

(Added Pub. L. 96–499, title XI, § 1122(a), Dec. 5, 1980, 94 Stat. 2682; amended Pub. L. 97–34, title VIII, § 831(a)(1), (b)–(d), (f), (g), Aug. 13, 1981, 95 Stat. 352–354; Pub. L. 97–248, title II, § 201(d)(6), formerly § 201(c)(6), Sept. 3, 1982, 96 Stat. 419, renumbered § 201(d)(6), Pub. L. 97–448, title III, § 306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 99–514, title VI, § 631(e)(12), title VII, § 701(e)(4)(G), title XVIII, § 1810(f)(1), Oct. 22, 1986, 100 Stat. 2275, 2343, 2826; Pub. L. 100–647, title I, § 1006(e)(19), Nov. 10, 1988, 102 Stat. 3403; Pub. L. 101–508, title XI, § 11801(a)(30), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 103–66, title XIII, § 13203(c)(2), Aug. 10, 1993, 107 Stat. 462; Pub. L. 104–188, title I, § 1702(g)(2), Aug. 20, 1996, 110 Stat. 1873; Pub. L. 108–357, title IV, §§ 411(c), 418(a), Oct. 22, 2004, 118 Stat. 1504, 1512; Pub. L. 109–135, title IV, § 403(p)(1), Dec. 21, 2005, 119 Stat. 2626; Pub. L. 109–222, title V, §§ 504(a), 505(a), 506(a), May 17, 2006, 120 Stat. 355, 357; Pub. L. 110–343, div. C, title II, § 208(a), Oct. 3, 2008, 122 Stat. 3865; Pub. L. 111–312, title VII, § 749(a), Dec. 17, 2010, 124 Stat. 3320.)

AMENDMENTS

2010—Subsec. (h)(4)(A)(ii). Pub. L. 111–312 substituted ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (h)(4)(A)(ii). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2006—Subsec. (h)(1). Pub. L. 109–222, § 505(a)(1), in first sentence, substituted ''a nonresident alien individual, a foreign corporation, or other qualified investment entity'' for ''a nonresident alien individual or a foreign corporation'' and ''such nonresident alien individual, foreign corporation, or other qualified investment entity'' for ''such nonresident alien individual or foreign

corporation'' and inserted second sentence and struck out former second sentence which read as follows: ''Notwithstanding the preceding sentence, any distribution by a real estate investment trust with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of the distribution.''

Subsec. (h)(4)(A)(i)(II). Pub. L. 109–222, § 504(a), inserted ''which is a United States real property holding corporation or which would be a United States real property holding corporation if the exceptions provided in subsections (c)(3) and (h)(2) did not apply to interests in any real estate investment trust or regulated investment company'' after ''any regulated investment company''.

Subsec. (h)(4)(A)(ii). Pub. L. 109–222, § 505(a)(2), inserted at end ''Notwithstanding the preceding sentence, an entity described in clause (i)(II) shall be treated as a qualified investment entity for purposes of applying paragraphs (1) and (5) and section 1445 with respect to any distribution by the entity to a nonresident alien individual or a foreign corporation which is attributable directly or indirectly to a distribution to the entity from a real estate investment trust.''

Subsec. (h)(5). Pub. L. 109–222, § 506(a), added par. (5).

2005—Subsec. (h)(1). Pub. L. 109–135 substituted ''any distribution by a real estate investment trust with respect to any class of stock'' for ''any distribution by a REIT with respect to any class of stock'' and ''the 1-year period ending on the date of the distribution'' for ''the taxable year''.

2004—Subsec. (h). Pub. L. 108–357, § 411(c)(5), substituted ''certain investment entities'' for ''REITS'' in heading.

Subsec. (h)(1). Pub. L. 108–357, § 418(a), inserted at end ''Notwithstanding the preceding sentence, any distribution by a REIT with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the taxable year.''

Pub. L. 108–357, § 411(c)(1), substituted ''qualified investment entity'' for ''REIT'' in two places.

Subsec. (h)(2). Pub. L. 108–357, § 411(c)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''The term 'United States real property interest' does not include any interest in a domestically-controlled REIT.''

Subsec. (h)(3). Pub. L. 108–357, § 411(c)(2), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''In the case of a domestically-controlled REIT, rules similar to the rules of subsection (d) shall apply to the foreign ownership percentage of any gain.''

Subsec. (h)(4)(A). Pub. L. 108–357, § 411(c)(3), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''The term 'REIT' means a real estate investment trust.''

Subsec. (h)(4)(B). Pub. L. 108–357, § 411(c)(3), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: ''The term 'domestically-controlled REIT' means a REIT in which at all times during the testing period less than 50 percent in value of the stock was held directly or indirectly by foreign persons.''

Subsec. (h)(4)(C), (D)(iii). Pub. L. 108–357, § 411(c)(4), substituted ''qualified investment entity'' for ''REIT''.

1996—Subsec. (f). Pub. L. 104–188 struck out subsec. (f) which read as follows:

''(f) DISTRIBUTIONS BY DOMESTIC CORPORATIONS TO FOREIGN SHAREHOLDERS.—If a domestic corporation distributes a United States real property interest to a nonresident alien individual or a foreign corporation in a distribution to which section 301 applies, notwithstanding any other provision of this chapter, the basis of such United States real property interest in the hands of such nonresident alien individual or foreign corporation shall not exceed—

''(1) the adjusted basis of such property before the distribution, increased by

''(2) the sum of—

''(A) any gain recognized by the distributing corporation on the distribution, and

''(B) any tax paid under this chapter by the distributee on such distribution.''

1993—Subsec. (a)(2). Pub. L. 103–66 substituted ''Minimum'' for ''21-percent minimum'' in heading and ''the taxable excess for purposes of section 55(b)(1)(A) shall not be less than'' for ''the amount determined under section 55(b)(1)(A) shall not be less than 21 percent of'' in subpar. (A).

1990—Subsec. (k). Pub. L. 101–508 struck out subsec. (k) which read as follows: ''If—

''(1) a foreign corporation adopts, or has adopted, a plan of liquidation described in section 334(b)(2)(A), and

''(2) the 12-month period described in section 334(b)(2)(B) for the acquisition by purchase of the stock of the foreign corporation, began after December 31, 1979, and before November 26, 1980,

then such foreign corporation may make an election to be treated, for the period following June 18, 1980, as a domestic corporation pursuant to section 897(i)(1). Notwithstanding an election under the preceding sentence, any selling shareholder of such corporation shall be considered to have sold the stock of a foreign corporation.''

1988—Subsec. (*l*). Pub. L. 100–647 struck out subsec. (*l*) which provided special rule for certain United States shareholders of liquidating foreign corporations.

1986—Subsec. (a)(2). Pub. L. 99–514, § 701(e)(4)(G), substituted ''21-percent'' for ''20-percent'' in heading and amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''In the case of any nonresident alien individual, the amount determined under section 55(a)(1) for the taxable year shall not be less than 20 percent of the lesser of—

''(i) the individual's alternative minimum taxable income (as defined in section 55(b)) for the taxable year, or

''(ii) the individual's net United States real property gain for the taxable year.''

Subsec. (d). Pub. L. 99–514, § 631(e)(12), in heading, struck out '', etc.,'' after ''distributions'', and in text, struck out heading and designation for par. (1), redesignated subpar. (A) as par. (1), redesignated subpar. (B) as par. (2) and substituted ''paragraph (1)'' for ''subparagraph (A)'' in introductory provisions, redesignated cl. (i) and its subcls. (I) and (II) as subpar. (A) and cls. (i) and (ii), respectively, redesignated cl. (ii) as subpar. (B), and struck out former par. (2) which provided that section 337 not apply to any sale or exchange of a United States real property interest by a foreign corporation.

Subsec. (i)(1), (4). Pub. L. 99–514, § 1810(f)(1), inserted reference to section 1445.

1982—Subsec. (a)(2)(A). Pub. L. 97–248 substituted ''section 55(a)(1) for the taxable year shall not be less than 20 percent of the lesser of—'' for ''section 55(a)(1)(A) for the taxable year shall not be less than 20 percent of whichever of the following is the least:'' in introductory provisions, in cl. (i) struck out ''(1)'' after ''section 55(b)'' and inserted ''or'' at the end, in cl. (ii) substituted a period for a comma and struck out ''or'' at the end, and struck out former cl. (iii), which had provided for the amount of $60,000 as a third alternative.

1981—Subsec. (c)(1)(A)(i). Pub. L. 97–34, § 831(a)(1), defined ''United States real property interest'' to also mean an interest in real property located in the Virgin Islands.

Subsec. (c)(4)(B). Pub. L. 97–34, § 831(b), substituted ''Assets'' for ''Interests'' in heading and in first sentence ''Under regulations prescribed by the Secretary,

assets held by a partnership, trust or estate shall be treated as held'' for ''United States real property interests held by a partnership, trust, or estate shall be treated as owned'' before ''proportionately by its partners or beneficiaries'', and inserted provisions respecting treatment of an asset as used or held for use in a trade or business by a partner or beneficiary when used or held by the partnership, trust, or estate in a trade or business and attributing chain treatment of such trade or business to partnership, trust, or estate which are above the first such entity.

Subsec. (d)(1)(B). Pub. L. 97–34, §831(c), substituted ''Exceptions'' for ''Exception where there is a carryover basis'' in heading, inserted introductory text ''Gain shall not be recognized under subparagraph (A)'', inserted cls. (i)(I) and (ii), and substituted cl. (i)(II) the basis of the distributed property in the hands of the distributee is no greater than the adjusted basis of such property before the distribution, increased by the amount of gain (if any) recognized by the distributing corporation'' for subpar. (B) provision ''Subparagraph (A) shall not apply if the basis of the distributed property in the hands of the distributee is the same as the adjusted basis of such property before the distribution increased by the amount of any gain recognized by the distributing corporation.''

Subsec. (i). Pub. L. 97–34, §831(d), in par. (1)(A) substituted ''holds a United States real property interest'' for ''has a permanent establishment in the United States'', in par. (1)(B) substituted ''treaty obligation of the United States the foreign corporation is entitled to nondiscriminatory treatment with respect to that interest'' for ''treaty, such permanent establishment may not be treated less favorably than domestic corporations carrying on the same activities'', in par. (3) inserted subpar. (A), designated existing provisions as subpar. (B), in subpar. (B) substituted ''such other conditions as the Secretary may prescribe by regulations with respect to the corporation or its shareholders'' for ''such conditions as may be prescribed by the Secretary'', and prescribed percentage interest required for making the requisite election and application of constructive ownership rules in determining existence of the required percentage of a class of interest.

Subsecs. (j) to (*l*). Pub. L. 97–34, §831(f), (g), added subsecs. (j) to (*l*).

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §749(b), Dec. 17, 2010, 124 Stat. 3320, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2010. Notwithstanding the preceding sentence, such amendment shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before the date of the enactment of this Act [Dec. 17, 2010].

''(2) AMOUNTS WITHHELD ON OR BEFORE DATE OF ENACTMENT.—In the case of a regulated investment company—

''(A) which makes a distribution after December 31, 2009, and before the date of the enactment of this Act [Dec. 17, 2010]; and

''(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code,

such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §208(b), Oct. 3, 2008, 122 Stat. 3865, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2008.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title V, §504(b), May 17, 2006, 120 Stat. 355, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the provisions of section 411 of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which it relates.''

Amendment by section 505(a) of Pub. L. 109–222 applicable to taxable years of qualified investment entities beginning after Dec. 31, 2005, except that no amount shall be required to be withheld under section 1441, 1442, or 1445 of the Internal Revenue Code of 1986 with respect to any distribution before May 17, 2006 if such amount was not otherwise required to be withheld under any such section as in effect before such amendments, see section 505(d) of Pub. L. 109–222, set out as a note under section 852 of this title.

Pub. L. 109–222, title V, §506(c), May 17, 2006, 120 Stat. 358, provided that: ''The amendments made by this section [amending this section and section 1445 of this title] shall apply to taxable years beginning after December 31, 2005, except that such amendments shall not apply to any distribution, or substitute dividend payment, occurring before the date that is 30 days after the date of the enactment of this Act [May 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 411(c)(1) of Pub. L. 108–357 applicable to dividends with respect to taxable years of regulated investment companies beginning after Dec. 31, 2004, and amendment by section 411(c)(2)–(5) of Pub. L. 108–357 effective after Dec. 31, 2004, see section 411(d)(1), (3) of Pub. L. 108–357, set out as a note under section 871 of this title.

Amendment by section 418(a) of Pub. L. 108–357 applicable to any distribution by a real estate investment trust which is either treated as a deduction for a taxable year of such trust beginning after Oct. 22, 2004, or made after Oct. 22, 2004, and treated as a deduction under section 860 of this title for a taxable year of such trust beginning on or before Oct. 22, 2004, see section 418(c) of Pub. L. 108–357, as amended, set out as a note under section 857 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13203(d) of Pub. L. 103–66, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(e)(12) of Pub. L. 99–514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in

section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99–514, set out as an Effective Date note under section 336 of this title.

Amendment by section 701(e)(4)(G) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1810(f)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 831(i) of Pub. L. 97–34 provided that: ''The amendments made by this section [amending this section and sections 862 and 6039C of this title and provisions set out as a note below] shall apply to dispositions after June 18, 1980, in taxable years ending after such date.''

EFFECTIVE DATE

Section 1125(a), (b) of subtitle C (§§ 1121–1125) of title XI of Pub. L. 96–499 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [enacting this section and provisions set out as notes under this section, and amending sections 861, 871, 882 of this title] shall apply to dispositions after June 18, 1980.

''(b) REPORTING.—The amendments made by section 1123 [enacting section 6039C of this title and amending section 6652 of this title] shall apply to 1980 and subsequent calendar years. In applying such amendments to 1980, such calendar year shall be treated as beginning on June 19, 1980, and ending on December 31, 1980.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(G) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL RULE FOR APPLYING SECTION 897

Section 1228 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1012(m), Nov. 10, 1988, 102 Stat. 3513, provided that:

''(a) IN GENERAL.—For purposes of section 897 of the Internal Revenue Code of 1986, gain shall not be recognized on the transfer, sale, exchange, or other disposition, of shares of stock of a United States real property holding company, if—

''(1) such United States real property holding company is a Delaware corporation incorporated on January 17, 1984,

''(2) the transfer, sale, exchange, or other disposition is to any member of a qualified ownership group,

''(3) the recipient of the share of stock elects, for purposes of such section 897, a carryover basis in the transferred shares,

''(4) the transfer, sale, exchange, or other disposition is part of a single integrated plan, whereby the stock of the corporation described in paragraph (1) becomes owned directly by the 2 corporations specifically referred to in subsection (b) or by such 2 corporations and by 1 or both of their jointly owned direct subsidiaries,

''(5) within 20 days after each transfer, sale, exchange, or other disposition, the person making such transfer, sale, exchange, or other disposition notifies the Internal Revenue Service of the transaction, the date of the transaction, the basis of the stock involved, the holding period for such stock, and such other information as the Internal Revenue Service may require, and

''(6) the integrated plan is completed before the date 4 years after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988 [Nov. 10, 1988].

In the case of any underpayment attributable to a failure to meet any requirement of this subsection, the period during which such underpayment may be assessed shall in no event expire before the date 5 years after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988.

''(b) MEMBER OF A QUALIFIED OWNERSHIP GROUP.—For purposes of this section, the term 'member of a qualified ownership group' means a corporation incorporated on June 16, 1890, under the laws of the Netherlands or a corporation incorporated on October 18, 1897, under the laws of the United Kingdom or any corporation owned directly or indirectly by either or both such corporations.

''(c) [Repealed. Pub. L. 100–647, title I, § 1012(m)(2), Nov. 10, 1988, 102 Stat. 3513.]

''(d) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of the enactment of this section [Oct. 22, 1986].''

GAIN FROM DISPOSITION OF INVESTMENT IN UNITED STATES REAL PROPERTY BY NONRESIDENT ALIEN INDIVIDUALS AND FOREIGN CORPORATIONS

Section 1125(c) of Pub. L. 96–499, as amended by Pub. L. 97–34, title VIII, § 831(h), Aug. 13, 1981, 95 Stat. 355; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), after December 31, 1984, nothing in section 894(a) or 7852(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or in any other provision of law shall be treated as requiring, by reason of any treaty obligation of the United States, an exemption from (or reduction of) any tax imposed by section 871 or 882 of such Code on a gain described in section 897 of such Code.

''(2) SPECIAL RULE FOR TREATIES RENEGOTIATED BEFORE 1985.—If—

''(A) any treaty (hereinafter in this paragraph referred to as the 'old treaty') is renegotiated to resolve conflicts between such treaty and the provisions of section 897 of the Internal Revenue Code of 1986, and

''(B) the new treaty is signed on or after January 1, 1981, and before January 1, 1985,

then paragraph (1) shall be applied with respect to obligations under the old treaty by substituting for 'December 31, 1984' the date (not later than 2 years after the new treaty was signed) specified in the new treaty (or accompanying exchange of notes).''

ADJUSTMENT IN BASIS FOR CERTAIN TRANSACTIONS BETWEEN RELATED PERSONS

Section 1125(d) of Pub. L. 96–499, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—In the case of any disposition after December 31, 1979, of a United States real property interest (as defined in section 897(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) to a related person (within the meaning of section 453(f)(1) of such Code), the basis of the interest in the hands of the person acquiring it shall be reduced by the amount of any nontaxed gain.

''(2) NONTAXED GAIN.—For purposes of paragraph (1), the term 'nontaxed gain' means any gain which is not subject to tax under section 871(b)(1) or 882(a)(1) of such Code—

''(A) because the disposition occurred before June 19, 1980, or

''(B) because of any treaty obligation of the United States.''

§ 898. Taxable year of certain foreign corporations

(a) General rule

For purposes of this title, the taxable year of any specified foreign corporation shall be the required year determined under subsection (c).

(b) Specified foreign corporation

For purposes of this section—

(1) In general

The term ''specified foreign corporation'' means any foreign corporation—

(A) which is treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, and

(B) with respect to which the ownership requirements of paragraph (2) are met.

(2) Ownership requirements

(A) In general

The ownership requirements of this paragraph are met with respect to any foreign corporation if a United States shareholder owns, on each testing day, more than 50 percent of—

(i) the total voting power of all classes of stock of such corporation entitled to vote, or

(ii) the total value of all classes of stock of such corporation.

(B) Ownership

For purposes of subparagraph (A), the rules of subsections (a) and (b) of section 958 shall apply in determining ownership.

(3) United States shareholder

The term ''United States shareholder'' has the meaning given to such term by section 951(b), except that, in the case of a foreign corporation having related person insurance income (as defined in section 953(c)(2)), the Secretary may treat any person as a United States shareholder for purposes of this section if such person is treated as a United States shareholder under section 953(c)(1).

(c) Determination of required year

(1) In general

The required year is—

(A) the majority U.S. shareholder year, or

(B) if there is no majority U.S. shareholder year, the taxable year prescribed under regulations.

(2) 1-month deferral allowed

A specified foreign corporation may elect, in lieu of the taxable year under paragraph (1)(A), a taxable year beginning 1 month earlier than the majority U.S. shareholder year.

(3) Majority U.S. shareholder year

(A) In general

For purposes of this subsection, the term ''majority U.S. shareholder year'' means the taxable year (if any) which, on each testing day, constituted the taxable year of—

(i) each United States shareholder described in subsection (b)(2)(A), and

(ii) each United States shareholder not described in clause (i) whose stock was treated as owned under subsection (b)(2)(B) by any shareholder described in such clause.

(B) Testing day

The testing days shall be—

(i) the first day of the corporation's taxable year (determined without regard to this section), or

(ii) the days during such representative period as the Secretary may prescribe.

(Added Pub. L. 101–239, title VII, § 7401(a), Dec. 19, 1989, 103 Stat. 2355; amended Pub. L. 108–357, title IV, § 413(c)(13), Oct. 22, 2004, 118 Stat. 1507.)

AMENDMENTS

2004—Subsec. (b)(1)(A). Pub. L. 108–357, § 413(c)(13)(A), amended subpar. (A) generally. Prior to amendment, subpar (A) read as follows:

''(A) which is—

''(i) treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, or

''(ii) a foreign personal holding company (as defined in section 552), and''.

Subsec. (b)(2)(B). Pub. L. 108–357, § 413(c)(13)(B), struck out ''and sections 551(f) and 554, whichever are applicable,'' after ''section 958''.

Subsec. (b)(3). Pub. L. 108–357, § 413(c)(13)(C), reenacted heading without change, struck out ''(A) In general'' before ''The term'', and struck out heading and text of subpar. (B). Text read as follows: ''In the case of any foreign personal holding company (as defined in section 552) which is not a specified foreign corporation by reason of paragraph (1)(A)(i), the term 'United States shareholder' means any person who is treated as a United States shareholder under section 551.''

Subsec. (c). Pub. L. 108–357, § 413(c)(13)(D), reenacted heading without change and amended text of subsec. (c) generally, substituting provisions stating general rule and relating to 1-month deferral and majority U.S. shareholder year, consisting of pars. (1) to (3), for provisions stating general rule and relating to 1-month deferral and majority U.S. shareholder year, consisting of par. (1), and provisions relating to required year in the case of a foreign personal holding company, consisting of par. (2).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31,

2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE

Section 7401(d) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 563 of this title] shall apply to taxable years of foreign corporations beginning after July 10, 1989.

''(2) SPECIAL RULES.—If any foreign corporation is required by the amendments made by this section to change its taxable year for its first taxable year beginning after July 10, 1989—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as having been made with the consent of the Secretary of the Treasury or his delegate, and

''(C) if, by reason of such change, any United States person is required to include in gross income for 1 taxable year amounts attributable to 2 taxable years of such foreign corporation, the amount which would otherwise be required to be included in gross income for such 1 taxable year by reason of the short taxable year of the foreign corporation resulting from such change shall be included in gross income ratably over the 4-taxable-year period beginning with such 1 taxable year.''

PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

Subpart

A. Foreign tax credit.
B. Earned income of citizens or residents of United States.
[C. Repealed.]
D. Possessions of the United States.
[E. Repealed.]
F. Controlled foreign corporations.
[G. Repealed.][1]
H. Income of certain nonresident United States citizens subject to foreign community property laws.[1]
I. Admissibility of documentation maintained in foreign countries.
J. Foreign currency transactions.

AMENDMENTS

2004—Pub. L. 108–357, title I, § 101(b)(2), Oct. 22, 2004, 118 Stat. 1423, struck out item for subpart E ''Qualifying foreign trade income''.

2000—Pub. L. 106–519, § 4(8), Nov. 15, 2000, 114 Stat. 2433, struck out item for subpart C ''Taxation of foreign sales corporations''.

Pub. L. 106–519, § 4(7), Nov. 15, 2000, 114 Stat. 2433, added item for subpart E and directed that former item for subpart E be struck out, which could not be executed because the item for subpart E had previously been struck out by Pub. L. 94–455, § 1053(d)(5). See 1976 Amendment note below.

1986—Pub. L. 99–514, title XII, § 1261(d), Oct. 22, 1986, 100 Stat. 2591, added item for subpart J.

1984—Pub. L. 98–369, div. A, title VIII, § 802(c)(4), July 18, 1984, 98 Stat. 999, added item for subpart C.

1982—Pub. L. 97–248, title III, § 337(b), Sept. 3, 1982, 96 Stat. 630, added item for subpart I.

1978—Pub. L. 95–615, § 202(g)(4), formerly § 202(f)(4), Nov. 8, 1978, 92 Stat. 3100, renumbered Pub. L. 96–222, title I, § 108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223, inserted in item for subpart B ''or residents'' after ''citizens.''

1976—Pub. L. 94–455, title X, § 1012(b)(3)(B), Oct. 4, 1976, 90 Stat. 1614, struck out item for subpart G ''Export Trade Corporation'' from analysis without a corresponding repeal of text in such subpart. The amendment probably should have struck out item for subpart H.

Pub. L. 94–455, title X, §§ 1052(c)(7), 1053(d)(5), Oct. 4, 1976, 90 Stat. 1648, 1649, struck out item for subpart C, relating to Western Hemisphere trade corporations, effective for taxable years beginning after Dec. 31, 1979, and item for subpart E, relating to China Trade Act corporations, effective for taxable years beginning after Dec. 31, 1977.

1966—Pub. L. 89–809, title I, § 105(e)(2), Nov. 13, 1966, 80 Stat. 1567, added item for subpart H.

1962—Pub. L. 87–834, § 12(b)(3), Oct. 16, 1962, 76 Stat. 1031, added items for subparts F and G.

SUBPART A—FOREIGN TAX CREDIT

Sec.

901. Taxes of foreign countries and of possessions of United States.
902. Deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation.
903. Credit for taxes in lieu of income, etc., taxes.
904. Limitation on credit.
905. Applicable rules.
906. Nonresident alien individuals and foreign corporations.
907. Special rules in case of foreign oil and gas income.
908. Reduction of credit for participation in or cooperation with an international boycott.
909. Suspension of taxes and credits until related income taken into account.

AMENDMENTS

2010—Pub. L. 111–226, title II, § 211(b), Aug. 10, 2010, 124 Stat. 2395, added item 909.

1986—Pub. L. 99–514, title XII, § 1202(d), Oct. 22, 1986, 100 Stat. 2531, substituted ''Deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation'' for ''Credit for corporate stockholder in foreign corporation'' in item 902.

1976—Pub. L. 94–455, title X, § 1061(b), Oct. 4, 1976, 90 Stat. 1650, added item 908.

1975—Pub. L. 94–12, title VI, § 601(c), Mar. 29, 1975, 89 Stat. 57, added item 907.

1966—Pub. L. 89–809, title I, § 106(a)(2), Nov. 13, 1966, 80 Stat. 1569, added item 906.

§ 901. Taxes of foreign countries and of possessions of United States

(a) Allowance of credit

If the taxpayer chooses to have the benefits of this subpart, the tax imposed by this chapter shall, subject to the limitation of section 904, be credited with the amounts provided in the applicable paragraph of subsection (b) plus, in the case of a corporation, the taxes deemed to have been paid under sections 902 and 960. Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year. The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under section 26(b).

(b) Amount allowed

Subject to the limitation of section 904, the following amounts shall be allowed as the credit under subsection (a):

(1) Citizens and domestic corporations

In the case of a citizen of the United States and of a domestic corporation, the amount of

[1] See 1976 Amendment note below.

any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or to any possession of the United States; and

(2) Resident of the United States or Puerto Rico

In the case of a resident of the United States and in the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, the amount of any such taxes paid or accrued during the taxable year to any possession of the United States; and

(3) Alien resident of the United States or Puerto Rico

In the case of an alien resident of the United States and in the case of an alien individual who is a bona fide resident of Puerto Rico during the entire taxable year, the amount of any such taxes paid or accrued during the taxable year to any foreign country; and

(4) Nonresident alien individuals and foreign corporations

In the case of any nonresident alien individual not described in section 876 and in the case of any foreign corporation, the amount determined pursuant to section 906; and

(5) Partnerships and estates

In the case of any person described in paragraph (1), (2), (3), or (4), who is a member of a partnership or a beneficiary of an estate or trust, the amount of his proportionate share of the taxes (described in such paragraph) of the partnership or the estate or trust paid or accrued during the taxable year to a foreign country or to any possession of the United States, as the case may be. Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income.

(c) Similar credit required for certain alien residents

Whenever the President finds that—

(1) a foreign country, in imposing income, war profits, and excess profits taxes, does not allow to citizens of the United States residing in such foreign country a credit for any such taxes paid or accrued to the United States or any foreign country, as the case may be, similar to the credit allowed under subsection (b)(3),

(2) such foreign country, when requested by the United States to do so, has not acted to provide such a similar credit to citizens of the United States residing in such foreign country, and

(3) it is in the public interest to allow the credit under subsection (b)(3) to citizens or subjects of such foreign country only if it allows such a similar credit to citizens of the United States residing in such foreign country,

the President shall proclaim that, for taxable years beginning while the proclamation remains in effect, the credit under subsection (b)(3) shall be allowed to citizens or subjects of such foreign country only if such foreign country, in imposing income, war profits, and excess profits taxes, allows to citizens of the United States residing in such foreign country such a similar credit.

(d) Treatment of dividends from a DISC or former DISC

For purposes of this subpart, dividends from a DISC or former DISC (as defined in section 992(a)) shall be treated as dividends from a foreign corporation to the extent such dividends are treated under part I as income from sources without the United States.

(e) Foreign taxes on mineral income

(1) Reduction in amount allowed

Notwithstanding subsection (b), the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year to any foreign country or possession of the United States with respect to foreign mineral income from sources within such country or possession which would (but for this paragraph) be allowed under such subsection shall be reduced by the amount (if any) by which—

(A) the amount of such taxes (or, if smaller, the amount of the tax which would be computed under this chapter with respect to such income determined without the deduction allowed under section 613), exceeds

(B) the amount of the tax computed under this chapter with respect to such income.

(2) Foreign mineral income defined

For purposes of paragraph (1), the term ''foreign mineral income'' means income derived from the extraction of minerals from mines, wells, or other natural deposits, the processing of such minerals into their primary products, and the transportation, distribution, or sale of such minerals or primary products. Such term includes, but is not limited to—

(A) dividends received from a foreign corporation in respect of which taxes are deemed paid by the taxpayer under section 902, to the extent such dividends are attributable to foreign mineral income, and

(B) that portion of the taxpayer's distributive share of the income of partnerships attributable to foreign mineral income.

(f) Certain payments for oil or gas not considered as taxes

Notwithstanding subsection (b) and sections 902 and 960, the amount of any income, or profits, and excess profits taxes paid or accrued during the taxable year to any foreign country in connection with the purchase and sale of oil or gas extracted in such country is not to be considered as tax for purposes of section 275(a) and this section if—

(1) the taxpayer has no economic interest in the oil or gas to which section 611(a) applies, and

(2) either such purchase or sale is at a price which differs from the fair market value for such oil or gas at the time of such purchase or sale.

(g) Certain taxes paid with respect to distributions from possessions corporations

(1) In general

For purposes of this chapter, any tax of a foreign country or possession of the United States which is paid or accrued with respect to any distribution from a corporation—

(A) to the extent that such distribution is attributable to periods during which such corporation is a possessions corporation, and

(B)(i) if a dividends received deduction is allowable with respect to such distribution under part VIII of subchapter B, or

(ii) to the extent that such distribution is received in connection with a liquidation or other transaction with respect to which gain or loss is not recognized,

shall not be treated as income, war profits, or excess profits taxes paid or accrued to a foreign country or possession of the United States, and no deduction shall be allowed under this title with respect to any amount so paid or accrued.

(2) Possessions corporation

For purposes of paragraph (1), a corporation shall be treated as a possessions corporation for any period during which an election under section 936 applied to such corporation, during which section 931 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1976) applied to such corporation, or during which section 957(c) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applied to such corporation.

[(h) Repealed. Pub. L. 110–172, § 11(g)(9), Dec. 29, 2007, 121 Stat. 2490]

(i) Taxes used to provide subsidies

Any income, war profits, or excess profits tax shall not be treated as a tax for purposes of this title to the extent—

(1) the amount of such tax is used (directly or indirectly) by the country imposing such tax to provide a subsidy by any means to the taxpayer, a related person (within the meaning of section 482), or any party to the transaction or to a related transaction, and

(2) such subsidy is determined (directly or indirectly) by reference to the amount of such tax, or the base used to compute the amount of such tax.

(j) Denial of foreign tax credit, etc., with respect to certain foreign countries

(1) In general

Notwithstanding any other provision of this part—

(A) no credit shall be allowed under subsection (a) for any income, war profits, or excess profits taxes paid or accrued (or deemed paid under section 902 or 960) to any country if such taxes are with respect to income attributable to a period during which this subsection applies to such country, and

(B) subsections (a), (b), and (c) of section 904 and sections 902 and 960 shall be applied separately with respect to income attributable to such a period from sources within such country.

(2) Countries to which subsection applies

(A) In general

This subsection shall apply to any foreign country—

(i) the government of which the United States does not recognize, unless such government is otherwise eligible to purchase defense articles or services under the Arms Export Control Act,

(ii) with respect to which the United States has severed diplomatic relations,

(iii) with respect to which the United States has not severed diplomatic relations but does not conduct such relations, or

(iv) which the Secretary of State has, pursuant to section 6(j) of the Export Administration Act of 1979, as amended, designated as a foreign country which repeatedly provides support for acts of international terrorisms.

(B) Period for which subsection applies

This subsection shall apply to any foreign country described in subparagraph (A) during the period—

(i) beginning on the later of—

(I) January 1, 1987, or

(II) 6 months after such country becomes a country described in subparagraph (A), and

(ii) ending on the date the Secretary of State certifies to the Secretary of the Treasury that such country is no longer described in subparagraph (A).

(3) Taxes allowed as a deduction, etc.

Sections 275 and 78 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.

(4) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations which treat income paid through 1 or more entities as derived from a foreign country to which this subsection applies if such income was, without regard to such entities, derived from such country.

(5) Waiver of denial

(A) In general

Paragraph (1) shall not apply with respect to taxes paid or accrued to a country if the President—

(i) determines that a waiver of the application of such paragraph is in the national interest of the United States and will expand trade and investment opportunities for United States companies in such country; and

(ii) reports such waiver under subparagraph (B).

(B) Report

Not less than 30 days before the date on which a waiver is granted under this paragraph, the President shall report to Congress—

(i) the intention to grant such waiver; and

(ii) the reason for the determination under subparagraph (A)(i).

(k) Minimum holding period for certain taxes on dividends

(1) Withholding taxes

(A) In general

In no event shall a credit be allowed under subsection (a) for any withholding tax on a dividend with respect to stock in a corporation if—

(i) such stock is held by the recipient of the dividend for 15 days or less during the 31-day period beginning on the date which is 15 days before the date on which such share becomes ex-dividend with respect to such dividend, or

(ii) to the extent that the recipient of the dividend is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

(B) Withholding tax

For purposes of this paragraph, the term ''withholding tax'' includes any tax determined on a gross basis; but does not include any tax which is in the nature of a prepayment of a tax imposed on a net basis.

(2) Deemed paid taxes

In the case of income, war profits, or excess profits taxes deemed paid under section 853, 902, or 960 through a chain of ownership of stock in 1 or more corporations, no credit shall be allowed under subsection (a) for such taxes if—

(A) any stock of any corporation in such chain (the ownership of which is required to obtain credit under subsection (a) for such taxes) is held for less than the period described in paragraph (1)(A)(i), or

(B) the corporation holding the stock is under an obligation referred to in paragraph (1)(A)(ii).

(3) 45-day rule in the case of certain preference dividends

In the case of stock having preference in dividends and dividends with respect to such stock which are attributable to a period or periods aggregating in excess of 366 days, paragraph (1)(A)(i) shall be applied—

(A) by substituting ''45 days'' for ''15 days'' each place it appears, and

(B) by substituting ''91-day period'' for ''31-day period''.

(4) Exception for certain taxes paid by securities dealers

(A) In general

Paragraphs (1) and (2) shall not apply to any qualified tax with respect to any security held in the active conduct in a foreign country of a business as a securities dealer of any person—

(i) who is registered as a securities broker or dealer under section 15(a) of the Securities Exchange Act of 1934,

(ii) who is registered as a Government securities broker or dealer under section 15C(a) of such Act, or

(iii) who is licensed or authorized in such foreign country to conduct securities activities in such country and is subject to bona fide regulation by a securities regulating authority of such country.

(B) Qualified tax

For purposes of subparagraph (A), the term ''qualified tax'' means a tax paid to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

(i) the dividend to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and

(ii) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

(C) Regulations

The Secretary may prescribe such regulations as may be appropriate to carry out this paragraph, including regulations to prevent the abuse of the exception provided by this paragraph and to treat other taxes as qualified taxes.

(5) Certain rules to apply

For purposes of this subsection, the rules of paragraphs (3) and (4) of section 246(c) shall apply.

(6) Treatment of bona fide sales

If a person's holding period is reduced by reason of the application of the rules of section 246(c)(4) to any contract for the bona fide sale of stock, the determination of whether such person's holding period meets the requirements of paragraph (2) with respect to taxes deemed paid under section 902 or 960 shall be made as of the date such contract is entered into.

(7) Taxes allowed as deduction, etc.

Sections 275 and 78 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.

***(l)* Minimum holding period for withholding taxes on gain and income other than dividends etc.**

(1) In general

In no event shall a credit be allowed under subsection (a) for any withholding tax (as defined in subsection (k)) on any item of income or gain with respect to any property if—

(A) such property is held by the recipient of the item for 15 days or less during the 31-day period beginning on the date which is 15 days before the date on which the right to receive payment of such item arises, or

(B) to the extent that the recipient of the item is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

This paragraph shall not apply to any dividend to which subsection (k) applies.

(2) Exception for taxes paid by dealers

(A) In general

Paragraph (1) shall not apply to any qualified tax with respect to any property held in

the active conduct in a foreign country of a business as a dealer in such property.

(B) Qualified tax

For purposes of subparagraph (A), the term ''qualified tax'' means a tax paid to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

(i) the item to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and

(ii) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

(C) Dealer

For purposes of subparagraph (A), the term ''dealer'' means—

(i) with respect to a security, any person to whom paragraphs (1) and (2) of subsection (k) would not apply by reason of paragraph (4) thereof, and

(ii) with respect to any other property, any person with respect to whom such property is described in section 1221(a)(1).

(D) Regulations

The Secretary may prescribe such regulations as may be appropriate to carry out this paragraph, including regulations to prevent the abuse of the exception provided by this paragraph and to treat other taxes as qualified taxes.

(3) Exceptions

The Secretary may by regulation provide that paragraph (1) shall not apply to property where the Secretary determines that the application of paragraph (1) to such property is not necessary to carry out the purposes of this subsection.

(4) Certain rules to apply

Rules similar to the rules of paragraphs (5), (6), and (7) of subsection (k) shall apply for purposes of this subsection.

(5) Determination of holding period

Holding periods shall be determined for purposes of this subsection without regard to section 1235 or any similar rule.

(m) Denial of foreign tax credit with respect to foreign income not subject to United States taxation by reason of covered asset acquisitions

(1) In general

In the case of a covered asset acquisition, the disqualified portion of any foreign income tax determined with respect to the income or gain attributable to the relevant foreign assets—

(A) shall not be taken into account in determining the credit allowed under subsection (a), and

(B) in the case of a foreign income tax paid by a section 902 corporation (as defined in section 909(d)(5)), shall not be taken into account for purposes of section 902 or 960.

(2) Covered asset acquisition

For purposes of this section, the term ''covered asset acquisition'' means—

(A) a qualified stock purchase (as defined in section 338(d)(3)) to which section 338(a) applies,

(B) any transaction which—

(i) is treated as an acquisition of assets for purposes of this chapter, and

(ii) is treated as the acquisition of stock of a corporation (or is disregarded) for purposes of the foreign income taxes of the relevant jurisdiction,

(C) any acquisition of an interest in a partnership which has an election in effect under section 754, and

(D) to the extent provided by the Secretary, any other similar transaction.

(3) Disqualified portion

For purposes of this section—

(A) In general

The term ''disqualified portion'' means, with respect to any covered asset acquisition, for any taxable year, the ratio (expressed as a percentage) of—

(i) the aggregate basis differences (but not below zero) allocable to such taxable year under subparagraph (B) with respect to all relevant foreign assets, divided by

(ii) the income on which the foreign income tax referred to in paragraph (1) is determined (or, if the taxpayer fails to substantiate such income to the satisfaction of the Secretary, such income shall be determined by dividing the amount of such foreign income tax by the highest marginal tax rate applicable to such income in the relevant jurisdiction).

(B) Allocation of basis difference

For purposes of subparagraph (A)(i)—

(i) In general

The basis difference with respect to any relevant foreign asset shall be allocated to taxable years using the applicable cost recovery method under this chapter.

(ii) Special rule for disposition of assets

Except as otherwise provided by the Secretary, in the case of the disposition of any relevant foreign asset—

(I) the basis difference allocated to the taxable year which includes the date of such disposition shall be the excess of the basis difference with respect to such asset over the aggregate basis difference with respect to such asset which has been allocated under clause (i) to all prior taxable years, and

(II) no basis difference with respect to such asset shall be allocated under clause (i) to any taxable year thereafter.

(C) Basis difference

(i) In general

The term ''basis difference'' means, with respect to any relevant foreign asset, the excess of—

(I) the adjusted basis of such asset immediately after the covered asset acquisition, over

(II) the adjusted basis of such asset immediately before the covered asset acquisition.

(ii) Built-in loss assets

In the case of a relevant foreign asset with respect to which the amount described in clause (i)(II) exceeds the amount described in clause (i)(I), such excess shall be taken into account under this subsection as a basis difference of a negative amount.

(iii) Special rule for section 338 elections

In the case of a covered asset acquisition described in paragraph (2)(A), the covered asset acquisition shall be treated for purposes of this subparagraph as occurring at the close of the acquisition date (as defined in section 338(h)(2)).

(4) Relevant foreign assets

For purposes of this section, the term ''relevant foreign asset'' means, with respect to any covered asset acquisition, any asset (including any goodwill, going concern value, or other intangible) with respect to such acquisition if income, deduction, gain, or loss attributable to such asset is taken into account in determining the foreign income tax referred to in paragraph (1).

(5) Foreign income tax

For purposes of this section, the term ''foreign income tax'' means any income, war profits, or excess profits tax paid or accrued to any foreign country or to any possession of the United States.

(6) Taxes allowed as a deduction, etc.

Sections 275 and 78 shall not apply to any tax which is not allowable as a credit under subsection (a) by reason of this subsection.

(7) Regulations

The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this subsection, including to exempt from the application of this subsection certain covered asset acquisitions, and relevant foreign assets with respect to which the basis difference is de minimis.

(n) Cross reference

(1) For deductions of income, war profits, and excess profits taxes paid to a foreign country or a possession of the United States, see sections 164 and 275.

(2) For right of each partner to make election under this section, see section 703(b).

(3) For right of estate or trust to the credit for taxes imposed by foreign countries and possessions of the United States under this section, see section 642(a).

(4) For reduction of credit for failure of a United States person to furnish certain information with respect to a foreign corporation or partnership controlled by him, see section 6038.

(Aug. 16, 1954, ch. 736, 68A Stat. 285; Pub. L. 86–780, §3(a), (b), Sept. 14, 1960, 74 Stat. 1013; Pub. L. 87–834, §§9(d)(3), 12(b)(1), Oct. 16, 1962, 76 Stat. 1001, 1031; Pub. L. 88–272, title II, §207(b)(7), Feb. 26, 1964, 78 Stat. 42; Pub. L. 89–384, §1(c)(2), Apr. 8, 1966, 80 Stat. 102; Pub. L. 89–809, title I, §106(a)(4), (5), (b)(1), (2), Nov. 13, 1966, 80 Stat. 1569; Pub. L. 91–172, title III, §301(b)(9), title V, §506(a), Dec. 30, 1969, 83 Stat. 585, 634; Pub. L. 92–178, title V, §502(b)(1), Dec. 10, 1971, 85 Stat. 549; Pub. L. 93–406, title II, §§2001(g)(2)(C), 2002(g)(3), 2005(c)(5), Sept. 2, 1974, 88 Stat. 957, 968, 991; Pub. L. 94–12, title VI, §601(b), Mar. 29, 1975, 89 Stat. 57; Pub. L. 94–455, title X, §§1031(b)(1), 1051(d), title XIX, §1901(b)(1)(H)(iii), (37)(A), Oct. 4, 1976, 90 Stat. 1622, 1645, 1791, 1803; Pub. L. 95–600, title VII, §701(u)(1)(A), (B), Nov. 6, 1978, 92 Stat. 2912; Pub. L. 97–248, title II, §201(d)(8)(A), formerly §201(c)(8)(A), §265(b)(2)(A)(iv), Sept. 3, 1982, 96 Stat. 420, 547, renumbered §201(d)(8)(A), Pub. L. 97–448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title IV, §474(r)(20), title VI, §612(e)(1), title VII, §713(c)(1)(C), title VIII, §801(d)(1), July 18, 1984, 98 Stat. 843, 912, 957, 995; Pub. L. 99–509, title VIII, §8041(a), Oct. 21, 1986, 100 Stat. 1962; Pub. L. 99–514, title I, §112(b)(3), title XII, §1204(a), title XVIII, §1876(p)(2), Oct. 22, 1986, 100 Stat. 2109, 2532, 2902; Pub. L. 100–203, title X, §10231(a), (b), Dec. 22, 1987, 101 Stat. 1330–418, 1330–419; Pub. L. 100–647, title I, §1012(j), title II, §2003(c)(1), Nov. 10, 1988, 102 Stat. 3512, 3598; Pub. L. 103–149, §4(b)(8)(A), Nov. 23, 1993, 107 Stat. 1505; Pub. L. 104–188, title I, §1904(b)(2), Aug. 20, 1996, 110 Stat. 1912; Pub. L. 105–34, title X, §1053(a), title XI, §1142(e)(4), Aug. 5, 1997, 111 Stat. 941, 983; Pub. L. 105–206, title VI, §6010(k)(3), July 22, 1998, 112 Stat. 815; Pub. L. 106–200, title VI, §601(a), May 18, 2000, 114 Stat. 305; Pub. L. 108–311, title IV, §406(g), Oct. 4, 2004, 118 Stat. 1190; Pub. L. 108–357, title IV, §405(b), title VIII, §832(a), (b), Oct. 22, 2004, 118 Stat. 1498, 1587, 1588; Pub. L. 109–135, title IV, §403(aa)(2), Dec. 21, 2005, 119 Stat. 2630; Pub. L. 110–172, §11(g)(9), Dec. 29, 2007, 121 Stat. 2490; Pub. L. 111–226, title II, §212(a), Aug. 10, 2010, 124 Stat. 2396.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1976, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 94–455, which was approved Oct. 4, 1976.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (g)(2), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Arms Export Control Act, referred to in subsec. (j)(2)(A)(i), is Pub. L. 90–269, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

Section 6(j) of the Export Administration Act of 1979, referred to in subsec. (j)(2)(A)(iv), is classified to section 2405(j) of Title 50, Appendix, War and National Defense.

Sections 15(a) and 15C(a) of the Securities Exchange Act of 1934, referred to in subsec. (k)(4)(A)(i), (ii), are classified to sections 78*o*(a) and 78*o*–5(a), respectively, of Title 15, Commerce and Trade.

AMENDMENTS

2010—Subsecs. (m), (n). Pub. L. 111–226 added subsec. (m) and redesignated former subsec. (m) as (n).

2007—Subsec. (h). Pub. L. 110–172 struck out subsec. (h), which read as follows: ''No credit shall be allowed under this section for any income, war profits, and excess profits taxes paid or accrued with respect to the foreign trade income (within the meaning of section 923(b)) of a FSC, other than section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6)).''

2005—Subsec. (*l*)(2)(C)(i). Pub. L. 109–135 struck out ''if such security were stock'' after ''paragraph (4) thereof''.

2004—Subsec. (b)(5). Pub. L. 108–357, §405(b), substituted ''any person'' for ''any individual''.

Subsec. (k). Pub. L. 108–357, § 832(b), inserted ''on dividends'' after ''taxes'' in heading.

Subsec. (k)(1)(A)(i). Pub. L. 108–311, § 406(g)(1), substituted ''31-day period'' for ''30-day period''.

Subsec. (k)(3)(B). Pub. L. 108–311, § 406(g)(2), substituted ''91-day period'' for ''90-day period'' and ''31-day period'' for ''30-day period''.

Subsecs. (*l*), (m). Pub. L. 108–357, § 832(a), added subsec. (*l*) and redesignated former subsec. (*l*) as (m).

2000—Subsec. (j)(5). Pub. L. 106–200 added par. (5).

1998—Subsec. (k)(4)(A). Pub. L. 105–206 substituted ''business as a securities dealer'' for ''securities business'' in introductory provisions.

1997—Subsec. (k). Pub. L. 105–34, § 1053(a), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 105–34, § 1053(a), redesignated subsec. (k) as (*l*).

Subsec. (*l*)(4). Pub. L. 105–34, § 1142(e)(4), which directed amendment of subsec. (k)(4) by substituting ''foreign corporation or partnership'' for ''foreign corporation'', was executed to subsec. (*l*)(4) to reflect the probable intent of Congress and the redesignation of subsec. (k) as (*l*) by Pub. L. 105–34, § 1053(a). See above.

1996—Subsec. (b)(5). Pub. L. 104–188 inserted at end ''Under rules or regulations prescribed by the Secretary, in the case of any foreign trust of which the settlor or another person would be treated as owner of any portion of the trust under subpart E but for section 672(f), the allocable amount of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on the settlor or such other person in respect of trust income.''

1993—Subsec. (j)(2)(C). Pub. L. 103–149 struck out heading and text of subpar. (C). Text read as follows:

''(i) IN GENERAL.—In addition to any period during which this subsection would otherwise apply to South Africa, this subsection shall apply to South Africa during the period—

''(I) beginning on January 1, 1988, and

''(II) ending on the date the Secretary of State certifies to the Secretary of the Treasury that South Africa meets the requirements of section 311(a) of the Comprehensive Anti-Apartheid Act of 1986 (as in effect on the date of the enactment of this subparagraph).

''(ii) SOUTH AFRICA DEFINED.—For purposes of clause (i), the term 'South Africa' has the meaning given to such term by paragraph (6) of section 3 of the Comprehensive Anti-Apartheid Act of 1986 (as so in effect).''

1988—Subsec. (g)(2). Pub. L. 100–647, § 1012(j), inserted ''(as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)'' after ''section 957(c)''.

Subsec. (j)(3). Pub. L. 100–647, § 2003(c)(1), inserted '', etc.'' at end of heading and substituted ''Sections 275 and 78'' for ''Section 275'' in text.

1987—Subsec. (j)(1). Pub. L. 100–203, § 10231(b), substituted ''during which'' for ''to which'' in subpar. (A) and ''such country'' for ''any country so identified'' in subpar. (B).

Subsec. (j)(2)(C). Pub. L. 100–203, § 10231(a), added subpar. (C).

1986—Subsec. (h). Pub. L. 99–514, § 1876(p)(2), inserted closing parenthesis after ''section 927(d)(6)''.

Subsec. (i). Pub. L. 99–514, § 1204(a), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (i)(3). Pub. L. 99–514, § 112(b)(3), substituted ''section 642(a)'' for ''section 642(a)(1)''.

Subsec. (j). Pub. L. 99–509 added subsec. (j). Former subsec. (j) redesignated (k).

Pub. L. 99–514, § 1204(a), redesignated former subsec. (i) as (j).

Subsec. (k). Pub. L. 99–509 redesignated former subsec. (j) as (k).

1984—Subsec. (a). Pub. L. 98–369, § 612(e)(1), substituted ''section 26(b)'' for ''section 25(b)''.

Pub. L. 98–369, § 474(r)(20), substituted ''The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under section 25(b)'' for ''The credit shall not be allowed against the tax imposed by section 56 (relating to corporate minimum tax), against the tax imposed for the taxable year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees) section 72(q)(1) (relating to 5-percent tax on premature distributions under annuity contracts),, against the tax imposed by section 402(e) (relating to tax on lump sum distributions), against the tax imposed for the taxable year by section 408(f) (relating to additional tax on income from certain retirement accounts), against the tax imposed by section 531 (relating to the tax on accumulated earnings), against the additional tax imposed for the taxable year under section 1351 (relating to recoveries of foreign expropriation losses), or against the personal holding company tax imposed by section 541''.

Pub. L. 98–369, § 713(c)(1)(C), substituted ''premature distributions to key employees'' for ''premature distributions to owner-employees''.

Subsecs. (h), (i). Pub. L. 98–369, § 801(d)(1), added subsec. (h) and redesignated former subsec. (h) as (i).

1982—Subsec. (a). Pub. L. 97–248 substituted ''(relating to corporate minimum tax)'' for ''(relating to minimum tax for tax preferences)'' after ''section 56'', and inserted ''section 72(q)(1) (relating to 5-percent tax on premature distributions under annuity contracts),'' after ''owner employees)''.

1978—Subsec. (g)(1). Pub. L. 95–600, § 701(u)(1)(A), inserted provisions prohibiting a deduction for any tax of a foreign country or possession of the United States which is paid or accrued with respect to any distribution from a corporation if a dividends received deduction is allowable with respect to that distribution from a corporation under part VIII of subchapter B.

Subsec. (g)(2). Pub. L. 95–600, § 701(u)(1)(B), inserted provision relating to application of section 957(c) of this title.

1976—Subsec. (a). Pub. L. 94–455, §§ 1031(b)(1), 1901(b)(37)(A), struck out ''under section 1333 (relating to war loss recoveries) or'' after ''imposed for the taxable year'' and ''applicable'' after ''subject to the''.

Subsec. (b). Pub. L. 94–455, § 1031(b)(1), struck out ''applicable'' after ''Subject to the''.

Subsec. (d). Pub. L. 94–455, § 1051(d)(1), struck out provisions relating to corporations receiving a large percentage of their gross receipts from sources within a possession of the United States and a corporation organized under the China Trade Act, 1922 (15 U.S.C. chapter 4).

Subsecs. (g), (h). Pub. L. 94–455, §§ 1051(d)(2), 1901(b)(1)(H)(iii), added subsec. (g), redesignated former subsec. (g) as (h), and, as redesignated, substituted ''section 642(a)(1)'' for ''section 642(a)(2)'' in par. (3).

1975—Subsecs. (f), (g). Pub. L. 94–12 added subsec. (f) and redesignated former subsec. (f) as (g).

1974—Subsec. (a). Pub. L. 93–460 inserted references to the tax imposed for the taxable year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), the tax imposed for the taxable year by section 408(f) (relating to additional tax on income from certain retirement accounts), and the tax imposed by section 402(e) (relating to tax on lump sum distributions).

1971—Subsec. (d). Pub. L. 92–178 inserted provision for treatment of dividends from a DISC or former DISC as dividends from a foreign corporation to the extent such dividends are treated under part I as income from sources without the United States.

1969—Subsec. (a). Pub. L. 91–172, § 301(b)(9), inserted ''against the tax imposed by section 56 (relating to minimum tax for tax preferences),'' after ''not be allowed'' in last sentence.

Subsecs. (e), (f). Pub. L. 91–172, § 506(a), added subsec. (e) and redesignated former subsec. (e) as (f).

1966—Subsec. (a). Pub. L. 89–384 added the additional tax imposed under section 1351 (relating to recoveries of foreign expropriation losses) to the list of taxes against which the foreign tax credit may not be allowed.

Subsec. (b)(3). Pub. L. 89–809, § 106(b)(1), struck out provisions which made the allowance of the credit de-

pendent upon whether the foreign country of which the alien resident was a citizen or subject, in imposing such taxes, allowed a similar credit to citizens of the United States residing in such country.

Subsec. (b)(4), (5). Pub. L. 89–809, §106(a)(4), (5), added par. (4), redesignated former par. (4) as (5) and inserted reference to par. (4).

Subsecs. (c) to (e). Pub. L. 89–809, §106(b)(2), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1964—Subsec. (d)(1). Pub. L. 88–272 inserted reference to section 275.

1962—Subsec. (a). Pub. L. 87–834, §12(b)(1), substituted ''sections 902 and 960'' for ''section 902''.

Subsec. (d)(4). Pub. L. 87–834, §9(d)(3), added par. (4).

1960—Subsec. (a). Pub. L. 86–780, §3(a), (b), inserted ''applicable'' before ''limitation'' and substituted ''Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year'' for ''Such choice may be made or changed at any time prior to the expiration of the period prescribed for making a claim for credit or refund of the tax against which the credit is allowable.''

Subsec. (b). Pub. L. 86–780, §3(b), inserted ''applicable'' before ''limitation''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–226, title II, §212(b), Aug. 10, 2010, 124 Stat. 2398, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to covered asset acquisitions (as defined in section 901(m)(2) of the Internal Revenue Code of 1986, as added by this section) after December 31, 2010.

''(2) TRANSITION RULE.—The amendments made by this section shall not apply to any covered asset acquisition (as so defined) with respect to which the transferor and the transferee are not related if such acquisition is—

''(A) made pursuant to a written agreement which was binding on January 1, 2011, and at all times thereafter,

''(B) described in a ruling request submitted to the Internal Revenue Service on or before July 29, 2010, or

''(C) described on or before January 1, 2011, in a public announcement or in a filing with the Securities and Exchange Commission.

''(3) RELATED PERSONS.—For purposes of this subsection, a person shall be treated as related to another person if the relationship between such persons is described in section 267 or 707(b) of the Internal Revenue Code of 1986.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Pub. L. 108–357, title IV, §405(c), Oct. 22, 2004, 118 Stat. 1498, provided that: ''The amendments made by this section [amending this section and section 902 of this title] shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title VIII, §832(c), Oct. 22, 2004, 118 Stat. 1588, provided that: ''The amendments made by this section [amending this section] shall apply to amounts paid or accrued more than 30 days after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by Pub. L. 108–311 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 406(h) of Pub. L. 108–311, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–200, title VI, §601(b), May 18, 2000, 114 Stat. 305, provided that: ''The amendment made by this section [amending this section] shall apply on or after February 1, 2001.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1053(a) of Pub. L. 105–34 applicable to dividends paid or accrued more than 30 days after Aug. 5, 1997, see section 1053(c) of Pub. L. 105–34, set out as a note under section 853 of this title.

Amendment by section 1142(e)(4) of Pub. L. 105–34 applicable to annual accounting periods beginning after Aug. 5, 1997, see section 1142(f) of Pub. L. 105–34, set out as a note under section 318 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective Aug. 20, 1996, with exception for certain trusts, see section 1904(d) of Pub. L. 104–188, set out as a note under section 643 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(j) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 2003(c)(2) of Pub. L. 100–647 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on January 1, 1987.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10231(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 112(b)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Section 1204(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to foreign taxes paid or accrued in taxable years beginning after December 31, 1986.''

Amendment by section 1876(p)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 8041(c) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and section 952 of this title] shall take effect on January 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(20) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 612(e)(1) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

Amendment by section 713(c)(1)(C) of Pub. L. 98–369 effective as if included in the provision of the Tax Eq-

uity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 801(d)(1) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 201(d)(8)(A) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Amendment by section 265(b)(2)(A)(iv) of Pub. L. 97–248 applicable to distributions after Dec. 31, 1982, see section 265(c)(2) of Pub. L. 97–248, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(u)(1)(C) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply as if included in section 901(g) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by section 1051(d)(2) of the Tax Reform Act of 1976 [section 1051(d)(2) of Pub. L. 94–455]. The amendments made by subparagraph (B) [amending this section] shall apply to distributions made after the date of the enactment of this Act [Nov. 6, 1978] in taxable years ending after such date.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with certain exceptions, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Amendment by section 1051(d)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with certain exceptions, and the provisions of subsec. (g) not to apply to any tax imposed by a possession of the United States with respect to the complete liquidation occurring before Jan. 1, 1979, of a corporation to the extent that such tax is attributable to earnings and profits accumulated by such corporation during periods ending before Jan. 1, 1976, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(b)(1)(H)(iii), (37)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, see section 601(d) of Pub. L. 94–12, set out as an Effective Date note under section 907 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 2001(g)(2)(C) of Pub. L. 93–406, which inserted reference to the tax imposed for the taxable year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 2001(i)(4) of Pub. L. 93–406, set out as a note under section 72 of this title.

Amendment by section 2002(g)(3) of Pub. L. 93–406, which inserted reference to the tax imposed for the taxable year by section 408(f) (relating to additional tax on income from certain retirement accounts), effective on Jan. 1, 1975, see section 2002(i)(2) of Pub. L. 93–406, set out as an Effective Date note under section 4973 of this title.

Amendment by section 2005(c)(5) of Pub. L. 93–406, which inserted reference to the tax imposed for the taxable year under section 402(e) (relating to tax on lump sum distributions), applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 301(b)(9) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 301(c) of Pub. L. 91–172, set out as a note under section 5 of this title.

Section 506(c) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section and section 904 of this title] shall apply with respect to taxable years beginning after December 31, 1969.''

EFFECTIVE DATE OF 1966 AMENDMENTS

Amendment by section 106(a)(4), (5) of Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 106(a)(6) of Pub. L. 89–809, set out as a note under section 874 of this title.

Section 106(b)(4) of Pub. L. 89–809 provided that: ''The amendments made by this subsection (other than paragraph (3)) [amending this section] shall apply with respect to taxable years beginning after December 31, 1966. The amendment made by paragraph (3) [amending section 2014 of this title] shall apply with respect to estates of decedents dying after the date of enactment of this Act [Nov. 13, 1966].''

Amendment by Pub. L. 89–384 applicable with respect to amounts received after December 31, 1964, in respect of foreign expropriation losses (as defined in section 1351(b) of this title) sustained after December 31, 1958, see section 2 of Pub. L. 89–384, set out as an Effective Date note under section 1351 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 12(b)(1) of Pub. L. 87–834 applicable with respect to taxable years of foreign corporations beginning after Dec. 31, 1962, and to taxable years of United States shareholders within which or with which such taxable years of such foreign corporations end, see section 12(c) of Pub. L. 87–834, set out as an Effective Date note under section 951 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by section 3(a) of Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1960, and amendment by section 3(b) of Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 4 of Pub. L. 86–780, set out as a note under section 904 of this title.

EFFECT OF AMENDMENT BY PUB. L. 103–149 ON REVENUE RULING 92–62

Amendment by section 4(b)(8)(A) of Pub. L. 103–149 not to be construed as affecting any of the transitional rules contained in Revenue Ruling 92–62 which apply by reason of the termination of the period for which subsec. (j) of this section was applicable to South Africa, see section 4(b)(8)(B) of Pub. L. 103–149 set out in a Repeal of Chapter; South African Democratic Transition Support note under section 5001 of Title 22, Foreign Relations and Intercourse.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 902. Deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation

(a) Taxes paid by foreign corporation treated as paid by domestic corporation

For purposes of this subpart, a domestic corporation which owns 10 percent or more of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of such foreign corporation's post-1986 foreign income taxes as—

(1) the amount of such dividends (determined without regard to section 78), bears to

(2) such foreign corporation's post-1986 undistributed earnings.

(b) Deemed taxes increased in case of certain lower tier corporations

(1) In general

If—

(A) any foreign corporation is a member of a qualified group, and

(B) such foreign corporation owns 10 percent or more of the voting stock of another member of such group from which it receives dividends in any taxable year,

such foreign corporation shall be deemed to have paid the same proportion of such other member's post-1986 foreign income taxes as would be determined under subsection (a) if such foreign corporation were a domestic corporation.

(2) Qualified group

For purposes of paragraph (1), the term ''qualified group'' means—

(A) the foreign corporation described in subsection (a), and

(B) any other foreign corporation if—

(i) the domestic corporation owns at least 5 percent of the voting stock of such other foreign corporation indirectly through a chain of foreign corporations connected through stock ownership of at least 10 percent of their voting stock,

(ii) the foreign corporation described in subsection (a) is the first tier corporation in such chain, and

(iii) such other corporation is not below the sixth tier in such chain.

The term ''qualified group'' shall not include any foreign corporation below the third tier in the chain referred to in clause (i) unless such foreign corporation is a controlled foreign corporation (as defined in section 957) and the domestic corporation is a United States shareholder (as defined in section 951(b)) in such foreign corporation. Paragraph (1) shall apply to those taxes paid by a member of the qualified group below the third tier only with respect to periods during which it was a controlled foreign corporation.

(c) Definitions and special rules

For purposes of this section—

(1) Post-1986 undistributed earnings

The term ''post-1986 undistributed earnings'' means the amount of the earnings and profits of the foreign corporation (computed in accordance with sections 964(a) and 986) accumulated in taxable years beginning after December 31, 1986—

(A) as of the close of the taxable year of the foreign corporation in which the dividend is distributed, and

(B) without diminution by reason of dividends distributed during such taxable year.

(2) Post-1986 foreign income taxes

The term ''post-1986 foreign income taxes'' means the sum of—

(A) the foreign income taxes with respect to the taxable year of the foreign corporation in which the dividend is distributed, and

(B) the foreign income taxes with respect to prior taxable years beginning after December 31, 1986, to the extent such foreign taxes were not attributable to dividends distributed by the foreign corporation in prior taxable years.

(3) Special rule where foreign corporation first qualifies after December 31, 1986

(A) In general

If the 1st day on which the requirements of subparagraph (B) are met with respect to any foreign corporation is in a taxable year of such corporation beginning after December 31, 1986, the post-1986 undistributed earnings and the post-1986 foreign income taxes of such foreign corporation shall be determined by taking into account only periods beginning on and after the 1st day of the 1st taxable year in which such requirements are met.

(B) Ownership requirements

The requirements of this subparagraph are met with respect to any foreign corporation if—

(i) 10 percent or more of the voting stock of such foreign corporation is owned by a domestic corporation, or

(ii) the requirements of subsection (b)(2) are met with respect to such foreign corporation.

(4) Foreign income taxes

(A) In general

The term ''foreign income taxes'' means any income, war profits, or excess profits taxes paid by the foreign corporation to any foreign country or possession of the United States.

(B) Treatment of deemed taxes

Except for purposes of determining the amount of the post-1986 foreign income taxes of a sixth tier foreign corporation referred to in subsection (b)(2), the term ''foreign in-

come taxes'' includes any such taxes deemed to be paid by the foreign corporation under this section.

(5) Accounting periods

In the case of a foreign corporation the income, war profits, and excess profits taxes of which are determined on the basis of an accounting period of less than 1 year, the word ''year'' as used in this subsection shall be construed to mean such accounting period.

(6) Treatment of distributions from earnings before 1987

(A) In general

In the case of any dividend paid by a foreign corporation out of accumulated profits (as defined in this section as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) for taxable years beginning before the 1st taxable year taken into account in determining the post-1986 undistributed earnings of such corporation—

(i) this section (as amended by the Tax Reform Act of 1986) shall not apply, but

(ii) this section (as in effect on the day before the date of the enactment of such Act) shall apply.

(B) Dividends paid first out of post-1986 earnings

Any dividend in a taxable year beginning after December 31, 1986, shall be treated as made out of post-1986 undistributed earnings to the extent thereof.

(7) Constructive ownership through partnerships

Stock owned, directly or indirectly, by or for a partnership shall be considered as being owned proportionately by its partners. Stock considered to be owned by a person by reason of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person. The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including rules to account for special partnership allocations of dividends, credits, and other incidents of ownership of stock in determining proportionate ownership.

(8) Regulations

The Secretary shall provide such regulations as may be necessary or appropriate to carry out the provisions of this section and section 960, including provisions which provide for the separate application of this section and section 960 to reflect the separate application of section 904 to separate types of income and loss.

(d) Cross references

(1) For inclusion in gross income of an amount equal to taxes deemed paid under subsection (a), see section 78.

(2) For application of subsections (a) and (b) with respect to taxes deemed paid in a prior taxable year by a United States shareholder with respect to a controlled foreign corporation, see section 960.

(3) For reduction of credit with respect to dividends paid out of post-1986 undistributed earnings for years for which certain information is not furnished, see section 6038.

(Aug. 16, 1954, ch. 736, 68A Stat. 286; Pub. L. 86–780, § 6(b)(2), Sept. 14, 1960, 74 Stat. 1016; Pub. L. 87–834, § 9(a), Oct. 16, 1962, 76 Stat. 999; Pub. L. 91–684, §§ 1, 2, Jan. 12, 1971, 84 Stat. 2068, 2069; Pub. L. 94–12, title VI, § 602(c)(6), Mar. 29, 1975, 89 Stat. 59; Pub. L. 94–455, title X, § 1033(a), Oct. 4, 1976, 90 Stat. 1626; Pub. L. 99–514, title XII, § 1202(a), Oct. 22, 1986, 100 Stat. 2528; Pub. L. 100–647, title I, § 1012(b)(1), (2), Nov. 10, 1988, 102 Stat. 3496; Pub. L. 105–34, title XI, §§ 1113(a), 1163(a), Aug. 5, 1997, 111 Stat. 970, 987; Pub. L. 108–357, title IV, § 405(a), Oct. 22, 2004, 118 Stat. 1498.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (c)(6)(A), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Tax Reform Act of 1986, referred to in subsec. (c)(6)(A)(i), is Pub. L. 99–514, Oct. 22, 1986, 100 Stat. 2085. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2004—Subsec. (c)(7), (8). Pub. L. 108–357 added par. (7) and redesignated former par. (7) as (8).

1997—Subsec. (b). Pub. L. 105–34, § 1113(a)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) consisted of pars. (1) to (3) relating to deemed taxes increased in case of certain 2nd and 3rd tier foreign corporations.

Subsec. (c)(2)(B). Pub. L. 105–34, § 1163(a), substituted ''attributable to'' for ''deemed paid with respect to''.

Subsec. (c)(3). Pub. L. 105–34, § 1113(a)(2)(C), substituted ''where foreign corporation first qualifies'' for ''where domestic corporation acquires 10 percent of foreign corporation'' in heading.

Pub. L. 105–34, § 1113(a)(2)(D), struck out ''ownership'' after ''on which the'' and ''in which such'' in subpar. (A) and before ''requirements of this subparagraph'' in introductory provisions of subpar. (B).

Subsec. (c)(3)(B). Pub. L. 105–34, § 1113(a)(2)(A), inserted ''or'' at end of cl. (i), added cl. (ii), and struck out former cls. (ii) and (iii) which read as follows:

''(ii) the requirements of subsection (b)(3)(A) are met with respect to such foreign corporation and 10 percent or more of the voting stock of such foreign corporation is owned by another foreign corporation described in clause (i), or

''(iii) the requirements of subsection (b)(3)(B) are met with respect to such foreign corporation and 10 percent or more of the voting stock of such foreign corporation is owned by another foreign corporation described in clause (ii).''

Subsec. (c)(4)(B). Pub. L. 105–34, § 1113(a)(2)(B), substituted ''sixth tier foreign corporation'' for ''3rd foreign corporation''.

1988—Subsec. (c)(1). Pub. L. 100–647, § 1012(b)(2), substituted ''sections 964(a) and 986'' for ''sections 964 and 986''.

Subsec. (c)(7). Pub. L. 100–647, § 1012(b)(1), substituted ''section 960'' for ''secton 960'' and ''this section and section 960'' for second reference to ''this section''.

1986—Pub. L. 99–514 amended section generally, substituting ''Deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation'' for ''Credit for corporate stockholder in foreign corporation'' as section catchline and substituting present provisions generally relating to post-1986 earnings and taxes for former provisions which had provided in subsec. (a) for a general rule with respect to treatment of taxes paid by foreign corporations, in subsec. (b) for treatment of taxes by a foreign subsidiary of first and second foreign corporations, in subsec. (c) for rules defining accumulated profits and determining accounting periods, and in subsec. (d) for cross references.

1976—Pub. L. 94–455, § 1033(a), struck out provisions by which dividends from less developed country corpora-

tions are not grossed-up by the amount of foreign taxes paid on the underlying income and the deemed-paid foreign tax credits attributable to those dividends are reduced proportionately, struck out subsec. (d) which defined less developed country corporations, and redesignated subsec. (e) as (d).

1975—Subsec. (d). Pub. L. 94–12 substituted ''paragraph (3) or (4)'', ''paragraph (3)'', ''paragraph (3)(A)'', and ''paragraph (3)(B)'' for ''section 955(c)(1) or (2)'', ''section 955(c)(1)'', ''section 955(c)(1)(A)'', and ''section 955(c)(1)(B)'', respectively, in existing provisions and added pars. (3), (4), and (5) and provisions following par. (5).

1971—Subsec. (b). Pub. L. 91–684, §1, substituted ''Foreign subsidiary of first and second foreign corporation'' for ''Foreign subsidiary of foreign corporation'' in heading, designated existing provisions as par. (1) and inserted terminology denominating corporations involved as first foreign corporation and second foreign corporation, and reduced the ownership percentage requirement in voting stock from 50 percent to 10 percent between the first and second foreign corporations, and added pars. (2) and (3).

Subsec. (c)(1)(A). Pub. L. 91–684, §2(1), substituted ''(b)(1)(A), and (b)(2)(A)'' for ''and (b)(1)''.

Subsec. (c)(1)(B). Pub. L. 91–684, §2(2), substituted ''(b)(1)(B), and (b)(2)(B)'' for ''and (b)(2)''.

1962—Subsec. (a). Pub. L. 87–834 limited provisions which required a domestic corporation owning at least 10 per cent of the voting stock of a foreign corporation from which it receives dividends in any taxable year to be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States which the amount of such dividends bears to the amount of accumulated profits to those cases where a foreign corporation paid such dividends out of accumulated profits of a year for which such foreign corporation is a less developed country corporation, and inserted provisions requiring, in the case of a domestic corporation which owns at least 10 percent of the voting stock of a foreign corporation from which it receives dividends in a taxable year, to the extent such dividends are paid by such foreign corporation out of accumulated profits of a year for which such foreign corporation is not a less developed country corporation, to be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States on or with respect to such accumulated profits, which the amount of such dividends (determined without regard to section 78) bears to the amount of such accumulated profits in excess of such income, war profits, and excess profits taxes (other than those deemed paid).

Subsec. (b). Pub. L. 87–834 substituted ''from which such dividends were paid which—

''(1) for purposes of applying subsection (a)(1), the amount of such dividends bears to the amount of the accumulated profits (as defined in subsection (c)(1)(A)) of such other foreign corporation from which such dividends were paid in excess of such income, war profits, and excess profits taxes, or

''(2) for purposes of applying subsection (a)(2), the amount of such dividends bears to the amount of the accumulated profits (as defined in subsection (c)(1)(B)) of such other foreign corporation from which such dividends were paid''

for ''from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits''.

Subsec. (c). Pub. L. 87–834 defined ''accumulated profits'' for purposes of subsecs. (a)(1) and (b)(1) as meaning the amount of its gains, profits, or income computed without reduction by the amount of the income, war profits, and excess profits taxes imposed on or with respect to such profits or income by and foreign country or any possession of the United States, and limited provisions defining ''accumulated profits'' as the amount of its gains, profits, or income in excess of the income, war profits, and excess profits taxes imposed on or with respect to such profits or income to subsecs. (a)(2) and (b)(2).

Subsec. (d). Pub. L. 87–834 substituted provisions defining ''less developed country corporation'' for provisions which established special rules for certain wholly-owned foreign corporations.

Subsec. (e). Pub. L. 87–834 designated existing provisions as par. (3) and added pars. (1) and (2).

1960—Subsec. (e). Pub. L. 86–780 added subsec. (e).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxes of foreign corporations for taxable years of such corporations beginning after Oct. 22, 2004, see section 405(c) of Pub. L. 108–357, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1113(c) of Pub. L. 105–34 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 960 of this title] shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of enactment of this Act [Aug. 5, 1997].

''(2) SPECIAL RULE.—In the case of any chain of foreign corporations described in clauses (i) and (ii) of section 902(b)(2)(B) of the Internal Revenue Code of 1986 (as amended by this section), no liquidation, reorganization, or similar transaction in a taxable year beginning after the date of the enactment of this Act shall have the effect of permitting taxes to be taken into account under section 902 of the Internal Revenue Code of 1986 which could not have been taken into account under such section but for such transaction.''

Section 1163(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and section 904 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1202(e) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 960 and 6038 of this title] shall apply to distributions by foreign corporations out of, and to inclusions under section 951(a) of the Internal Revenue Code of 1986 attributable to, earnings and profits for taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1033(c) of Pub. L. 94–455, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and sections 78, 535, 545, and 960 of this title] shall apply—

''(1) in respect of any distribution received by a domestic corporation after December 31, 1977, and

''(2) in respect of any distribution received by a domestic corporation before January 1, 1978, in a taxable year of such corporation beginning after December 31, 1975, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after December 31, 1975.

For purposes of paragraph (2), a distribution made by a foreign corporation out of its profits which are attributable to a distribution received from a foreign corporation to which section 902(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies shall be treated as made out of the accumulated profits of a for-

eign corporation for a taxable year beginning before January 1, 1976, to the extent that such distribution was paid out of the accumulated profits of such foreign corporation for a taxable year beginning before January 1, 1976.''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94–12, set out as an Effective Date note under section 955 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 3 of Pub. L. 91–684 provided that: ''The amendments made by this Act [amending this section] shall apply with respect to all taxable years of domestic corporations, ending after the date of enactment of this Act [Jan. 12, 1971], but only in respect of dividends paid by one corporation to another corporation after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 9(e) of Pub. L. 87–834 provided that: ''The amendments made by this section [enacting section 78 of this title and amending this section and sections 535, 545, 861, and 901 of this title] shall apply—

''(1) in respect of any distribution received by a domestic corporation after December 31, 1964, and

''(2) in respect of any distribution received by a domestic corporation before January 1, 1965, in a taxable year of such corporation beginning after December 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after December 31, 1962.

For purposes of paragraph (2), a distribution made by a foreign corporation out of its profits which are attributable to a distribution received from a foreign subsidiary to which section 902(b) applies shall be treated as made out of the accumulated profits of a foreign corporation for a taxable year beginning before January 1, 1963, to the extent that such distribution was paid out of the accumulated profits of such foreign subsidiary for a taxable year beginning before January 1, 1963.''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1960, see section 6(c) of Pub. L. 86–780), set out as an Effective Date note under section 6038 of this title.

INCREASE IN EARNINGS AND PROFITS OF FOREIGN CORPORATIONS UNDER SECTION 1023(e)(3)(C) OF PUB. L. 99–514

Section 1012(b)(3) of Pub. L. 100–647 provided that: ''For purposes of sections 902 and 960 of the 1986 Code, the increase in earnings and profits of any foreign corporation under section 1023(e)(3)(C) of the Reform Act [Pub. L. 99–514, set out as an Effective Date note under section 846 of this title] shall be taken into account ratably over the 10-year period beginning with the corporation's first taxable year beginning after December 31, 1986.''

§ 903. Credit for taxes in lieu of income, etc., taxes

For purposes of this part and of sections 164(a) and 275(a), the term ''income, war profits, and excess profits taxes'' shall include a tax paid in lieu of a tax on income, war profits, or excess profits otherwise generally imposed by any foreign country or by any possession of the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 287; Pub. L. 88–272, title II, § 207(b)(8), Feb. 26, 1964, 78 Stat. 42; Pub. L. 100–647, title I, § 1012(v)(9), Nov. 10, 1988, 102 Stat. 3530; Pub. L. 106–519, § 4(4), Nov. 15, 2000, 114 Stat. 2433; Pub. L. 108–357, title I, § 101(b)(7), Oct. 22, 2004, 118 Stat. 1423.)

AMENDMENTS

2004—Pub. L. 108–357 substituted ''164(a)'' for ''114, 164(a),''.

2000—Pub. L. 106–519 substituted ''114, 164(a),'' for ''164(a)''.

1988—Pub. L. 100–647 substituted ''this part'' for ''this subpart''.

1964—Pub. L. 88–272 substituted ''sections 164(a) and 275(a)'' for ''section 164(b)''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–519 applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88–272, set out as a note under section 164 of this title.

§ 904. Limitation on credit

(a) Limitation

The total amount of the credit taken under section 901(a) shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources without the United States (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

(b) Taxable income for purpose of computing limitation

(1) Personal exemptions

For purposes of subsection (a), the taxable income in the case of an individual, estate, or trust shall be computed without any deduction for personal exemptions under section 151 or 642(b).

(2) Capital gains

For purposes of this section—

(A) In general

Taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only to the extent of foreign source capital gain net income.

(B) Special rules where capital gain rate differential

In the case of any taxable year for which there is a capital gain rate differential—

(i) in lieu of applying subparagraph (A), the taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only in an amount equal to foreign source capital gain net income reduced by the rate differential portion of foreign source net capital gain,

(ii) the entire taxable income shall include gain from the sale or exchange of capital assets only in an amount equal to capital gain net income reduced by the rate differential portion of net capital gain, and

(iii) for purposes of determining taxable income from sources outside the United States, any net capital loss (and any amount which is a short-term capital loss under section 1212(a)) from sources outside the United States to the extent taken into account in determining capital gain net income for the taxable year shall be reduced by an amount equal to the rate differential portion of the excess of net capital gain from sources within the United States over net capital gain.

(C) Coordination with capital gains rates

The Secretary may by regulations modify the application of this paragraph and paragraph (3) to the extent necessary to properly reflect any capital gain rate differential under section 1(h) or 1201(a) and the computation of net capital gain.

(3) Definitions

For purposes of this subsection—

(A) Foreign source capital gain net income

The term ''foreign source capital gain net income'' means the lesser of—

(i) capital gain net income from sources without the United States, or

(ii) capital gain net income.

(B) Foreign source net capital gain

The term ''foreign source net capital gain'' means the lesser of—

(i) net capital gain from sources without the United States, or

(ii) net capital gain.

(C) Section 1231 gains

The term ''gain from the sale or exchange of capital assets'' includes any gain so treated under section 1231.

(D) Capital gain rate differential

There is a capital gain rate differential for any taxable year if—

(i) in the case of a taxpayer other than a corporation, subsection (h) of section 1 applies to such taxable year, or

(ii) in the case of a corporation, any rate of tax imposed by section 11, 511, or 831(a) or (b) (whichever applies) exceeds the alternative rate of tax under section 1201(a) (determined without regard to the last sentence of section 11(b)(1)).

(E) Rate differential portion

(i) In general

The rate differential portion of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as—

(I) the excess of the highest applicable tax rate over the alternative tax rate, bears to

(II) the highest applicable tax rate.

(ii) Highest applicable tax rate

For purposes of clause (i), the term ''highest applicable tax rate'' means—

(I) in the case of a taxpayer other than a corporation, the highest rate of tax set forth in subsection (a), (b), (c), (d), or (e) of section 1 (whichever applies), or

(II) in the case of a corporation, the highest rate of tax specified in section 11(b).

(iii) Alternative tax rate

For purposes of clause (i), the term ''alternative tax rate'' means—

(I) in the case of a taxpayer other than a corporation, the alternative rate of tax determined under section 1(h), or

(II) in the case of a corporation, the alternative rate of tax under section 1201(a).

(4) Coordination with section 936

For purposes of subsection (a), in the case of a corporation, the taxable income shall not include any portion thereof taken into account for purposes of the credit (if any) allowed by section 936 (without regard to subsections (a)(4) and (i) thereof).

(c) Carryback and carryover of excess tax paid

Any amount by which all taxes paid or accrued to foreign countries or possessions of the United States for any taxable year for which the taxpayer chooses to have the benefits of this subpart exceed the limitation under subsection (a) shall be deemed taxes paid or accrued to foreign countries or possessions of the United States in the first preceding taxable year and in any of the first 10 succeeding taxable years, in that order and to the extent not deemed taxes paid or accrued in a prior taxable year, in the amount by which the limitation under subsection (a) for such preceding or succeeding taxable year exceeds the sum of the taxes paid or accrued to foreign countries or possessions of the United States for such preceding or succeeding taxable year and the amount of the taxes for any taxable year earlier than the current taxable year which shall be deemed to have been paid or accrued in such preceding or subsequent taxable year (whether or not the taxpayer chooses to have the benefits of this subpart with respect to such earlier taxable year). Such amount deemed paid or accrued in any year may be availed of only as a tax credit and not as a deduction and only if the taxpayer for such year chooses to have the benefits of this subpart as to taxes paid or accrued for that year to foreign countries or possessions of the United States.

(d) Separate application of section with respect to certain categories of income

(1) In general

The provisions of subsections (a), (b), and (c) and sections 902, 907, and 960 shall be applied separately with respect to—

(A) passive category income, and
(B) general category income.

(2) Definitions and special rules

For purposes of this subsection—

(A) Categories

(i) Passive category income

The term ''passive category income'' means passive income and specified passive category income.

(ii) General category income

The term ''general category income'' means income other than passive category income.

(B) Passive income

(i) In general

Except as otherwise provided in this subparagraph, the term ''passive income'' means any income received or accrued by any person which is of a kind which would be foreign personal holding company income (as defined in section 954(c)).

(ii) Certain amounts included

Except as provided in clause (iii), the term ''passive income'' includes, except as provided in subparagraph (E)(iii)[1] or paragraph (3)(I)[1], any amount includible in gross income under section 1293 (relating to certain passive foreign investment companies).

(iii) Exceptions

The term ''passive income'' shall not include—

(I) any export financing interest, and
(II) any high-taxed income.

(iv) Clarification of application of section 864(d)(6)

In determining whether any income is of a kind which would be foreign personal holding company income, the rules of section 864(d)(6) shall apply only in the case of income of a controlled foreign corporation.

(v) Specified passive category income

The term ''specified passive category income'' means—

(I) dividends from a DISC or former DISC (as defined in section 992(a)) to the extent such dividends are treated as income from sources without the United States, and
(II) distributions from a former FSC (as defined in section 922) out of earnings and profits attributable to foreign trade income (within the meaning of section 923(b)) or interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income (as defined in section 923(b)).

Any reference in subclause (II) to section 922, 923, or 927 shall be treated as a reference to such section as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.

(C) Treatment of financial services income and companies

(i) In general

Financial services income shall be treated as general category income in the case of—

(I) a member of a financial services group, and
(II) any other person if such person is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business.

(ii) Financial services group

The term ''financial services group'' means any affiliated group (as defined in section 1504(a) without regard to paragraphs (2) and (3) of section 1504(b)) which is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business. In determining whether such a group is so engaged, there shall be taken into account only the income of members of the group that are—

(I) United States corporations, or
(II) controlled foreign corporations in which such United States corporations own, directly or indirectly, at least 80 percent of the total voting power and value of the stock.

(iii) Pass-thru entities

The Secretary shall by regulation specify for purposes of this subparagraph the treatment of financial services income received or accrued by partnerships and by other pass-thru entities which are not members of a financial services group.

(D) Financial services income

(i) In general

Except as otherwise provided in this subparagraph, the term ''financial services income'' means any income which is received or accrued by any person predominantly engaged in the active conduct of a banking, insurance, financing, or similar business, and which is—

(I) described in clause (ii), or
(II) passive income (determined without regard to subparagraph (B)(iii)(II)).

(ii) General description of financial services income

Income is described in this clause if such income is—

(I) derived in the active conduct of a banking, financing, or similar business,
(II) derived from the investment by an insurance company of its unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business, or
(III) of a kind which would be insurance income as defined in section 953(a) determined without regard to those provisions of paragraph (1)(A) of such section which limit insurance income to income from countries other than the

[1] See References in Text note below.

country in which the corporation was created or organized.

(E) Noncontrolled section 902 corporation

(i) In general

The term ''noncontrolled section 902 corporation'' means any foreign corporation with respect to which the taxpayer meets the stock ownership requirements of section 902(a) (or, for purposes of applying paragraph (3) or (4), the requirements of section 902(b)). A controlled foreign corporation shall not be treated as a noncontrolled section 902 corporation with respect to any distribution out of its earnings and profits for periods during which it was a controlled foreign corporation.

(ii) Treatment of inclusions under section 1293

If any foreign corporation is a non-controlled section 902 corporation with respect to the taxpayer, any inclusion under section 1293 with respect to such corporation shall be treated as a dividend from such corporation.

(F) High-taxed income

The term ''high-taxed income'' means any income which (but for this subparagraph) would be passive income if the sum of—

(i) the foreign income taxes paid or accrued by the taxpayer with respect to such income, and

(ii) the foreign income taxes deemed paid by the taxpayer with respect to such income under section 902 or 960,

exceeds the highest rate of tax specified in section 1 or 11 (whichever applies) multiplied by the amount of such income (determined with regard to section 78). For purposes of the preceding sentence, the term ''foreign income taxes'' means any income, war profits, or excess profits tax imposed by any foreign country or possession of the United States.

(G) Export financing interest

For purposes of this paragraph, the term ''export financing interest'' means any interest derived from financing the sale (or other disposition) for use or consumption outside the United States of any property—

(i) which is manufactured, produced, grown, or extracted in the United States by the taxpayer or a related person, and

(ii) not more than 50 percent of the fair market value of which is attributable to products imported into the United States.

For purposes of clause (ii), the fair market value of any property imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation.

(H) Treatment of income tax base differences

(i) In general

In the case of taxable years beginning after December 31, 2006, tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles shall be treated as imposed on income described in paragraph (1)(B).

(ii) Special rule for years before 2007

(I) In general

In the case of taxes paid or accrued in taxable years beginning after December 31, 2004, and before January 1, 2007, a taxpayer may elect to treat tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles as tax imposed on income described in subparagraph (C) or (I) of paragraph (1).

(II) Election irrevocable

Any such election shall apply to the taxable year for which made and all subsequent taxable years described in subclause (I) unless revoked with the consent of the Secretary.

(I) Related person

For purposes of this paragraph, the term ''related person'' has the meaning given such term by section 954(d)(3), except that such section shall be applied by substituting ''the person with respect to whom the determination is being made'' for ''controlled foreign corporation'' each place it appears.

(J) Transitional rule

For purposes of paragraph (1)—

(i) taxes paid or accrued in a taxable year beginning before January 1, 1987, with respect to income which was described in subparagraph (A) of paragraph (1) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) shall be treated as taxes paid or accrued with respect to income described in subparagraph (A) of paragraph (1) (as in effect after such date),

(ii) taxes paid or accrued in a taxable year beginning before January 1, 1987, with respect to income which was described in subparagraph (E) of paragraph (1) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) shall be treated as taxes paid or accrued with respect to income described in subparagraph (I) of paragraph (1) (as in effect after such date) except that—

(I) such taxes shall be treated as paid or accrued with respect to shipping income to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income,

(II) in the case of a person described in subparagraph (C)(i), such taxes shall be treated as paid or accrued with respect to financial services income to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income, and

(III) such taxes shall be treated as paid or accrued with respect to high with-

holding tax interest to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income, and

(iii) taxes paid or accrued in a taxable year beginning before January 1, 1987, with respect to income described in any other subparagraph of paragraph (1) (as so in effect before such date) shall be treated as taxes paid or accrued with respect to income described in the corresponding subparagraph of paragraph (1) (as so in effect after such date).

(K) Transitional rules for 2007 changes

For purposes of paragraph (1)—

(i) taxes carried from any taxable year beginning before January 1, 2007, to any taxable year beginning on or after such date, with respect to any item of income, shall be treated as described in the subparagraph of paragraph (1) in which such income would be described were such taxes paid or accrued in a taxable year beginning on or after such date, and

(ii) the Secretary may by regulations provide for the allocation of any carryback of taxes with respect to income from a taxable year beginning on or after January 1, 2007, to a taxable year beginning before such date for purposes of allocating such income among the separate categories in effect for the taxable year to which carried.

(3) Look-thru in case of controlled foreign corporations

(A) In general

Except as otherwise provided in this paragraph, dividends, interest, rents, and royalties received or accrued by the taxpayer from a controlled foreign corporation in which the taxpayer is a United States shareholder shall not be treated as passive category income.

(B) Subpart F inclusions

Any amount included in gross income under section 951(a)(1)(A) shall be treated as passive category income to the extent the amount so included is attributable to passive category income.

(C) Interest, rents, and royalties

Any interest, rent, or royalty which is received or accrued from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as passive category income to the extent it is properly allocable (under regulations prescribed by the Secretary) to passive category income of the controlled foreign corporation.

(D) Dividends

Any dividend paid out of the earnings and profits of any controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as passive category income in proportion to the ratio of—

(i) the portion of the earnings and profits attributable to passive category income, to

(ii) the total amount of earnings and profits.

(E) Look-thru applies only where subpart F applies

If a controlled foreign corporation meets the requirements of section 954(b)(3)(A) (relating to de minimis rule) for any taxable year, for purposes of this paragraph, none of its foreign base company income (as defined in section 954(a) without regard to section 954(b)(5)) and none of its gross insurance income (as defined in section 954(b)(3)(C)) for such taxable year shall be treated as passive category income, except that this sentence shall not apply to any income which (without regard to this sentence) would be treated as financial services income. Solely for purposes of applying subparagraph (D), passive income of a controlled foreign corporation shall not be treated as passive category income if the requirements of section 954(b)(4) are met with respect to such income.

(F) Coordination with high-taxed income provisions

(i) In determining whether any income of a controlled foreign corporation is passive category income, subclause (II) of paragraph (2)(B)(iii) shall not apply.

(ii) Any income of the taxpayer which is treated as passive category income under this paragraph shall be so treated notwithstanding any provision of paragraph (2); except that the determination of whether any amount is high-taxed income shall be made after the application of this paragraph.

(G) Dividend

For purposes of this paragraph, the term ''dividend'' includes any amount included in gross income in section 951(a)(1)(B). Any amount included in gross income under section 78 to the extent attributable to amounts included in gross income in section 951(a)(1)(A) shall not be treated as a dividend but shall be treated as included in gross income under section 951(a)(1)(A).

(H) Look-thru applies to passive foreign investment company inclusion

If—

(i) a passive foreign investment company is a controlled foreign corporation, and

(ii) the taxpayer is a United States shareholder in such controlled foreign corporation,

any amount included in gross income under section 1293 shall be treated as income in a separate category to the extent such amount is attributable to income in such category.

(4) Look-thru applies to dividends from noncontrolled section 902 corporations

(A) In general

For purposes of this subsection, any dividend from a noncontrolled section 902 corporation with respect to the taxpayer shall be treated as income described in a subparagraph of paragraph (1) in proportion to the ratio of—

(i) the portion of earnings and profits attributable to income described in such subparagraph, to

(ii) the total amount of earnings and profits.

(B) Earnings and profits of controlled foreign corporations

In the case of any distribution from a controlled foreign corporation to a United States shareholder, rules similar to the rules of subparagraph (A) shall apply in determining the extent to which earnings and profits of the controlled foreign corporation which are attributable to dividends received from a noncontrolled section 902 corporation may be treated as income in a separate category.

(C) Special rules

For purposes of this paragraph—

(i) Earnings and profits

(I) In general

The rules of section 316 shall apply.

(II) Regulations

The Secretary may prescribe regulations regarding the treatment of distributions out of earnings and profits for periods before the taxpayer's acquisition of the stock to which the distributions relate.

(ii) Inadequate substantiation

If the Secretary determines that the proper subparagraph of paragraph (1) in which a dividend is described has not been substantiated, such dividend shall be treated as income described in paragraph (1)(A).

(iii) Coordination with high-taxed income provisions

Rules similar to the rules of paragraph (3)(F) shall apply for purposes of this paragraph.

(iv) Look-thru with respect to carryover of credit

Rules similar to subparagraph (A) also shall apply to any carryforward under subsection (c) from a taxable year beginning before January 1, 2003, of tax allocable to a dividend from a noncontrolled section 902 corporation with respect to the taxpayer. The Secretary may by regulations provide for the allocation of any carryback of tax allocable to a dividend from a noncontrolled section 902 corporation from a taxable year beginning on or after January 1, 2003, to a taxable year beginning before such date for purposes of allocating such dividend among the separate categories in effect for the taxable year to which carried.

(5) Controlled foreign corporation; United States shareholder

For purposes of this subsection—

(A) Controlled foreign corporation

The term ''controlled foreign corporation'' has the meaning given such term by section 957 (taking into account section 953(c)).

(B) United States shareholder

The term ''United States shareholder'' has the meaning given such term by section 951(b) (taking into account section 953(c)).

(6) Separate application to items resourced under treaties

(A) In general

If—

(i) without regard to any treaty obligation of the United States, any item of income would be treated as derived from sources within the United States,

(ii) under a treaty obligation of the United States, such item would be treated as arising from sources outside the United States, and

(iii) the taxpayer chooses the benefits of such treaty obligation,

subsections (a), (b), and (c) of this section and sections 902, 907, and 960 shall be applied separately with respect to each such item.

(B) Coordination with other provisions

This paragraph shall not apply to any item of income to which subsection (h)(10) or section 865(h) applies.

(C) Regulations

The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this paragraph, including regulations or other guidance which provides that related items of income may be aggregated for purposes of this paragraph.

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate for the purposes of this subsection, including regulations—

(A) for the application of paragraph (3) and subsection (f)(5) in the case of income paid (or loans made) through 1 or more entities or between 2 or more chains of entities,

(B) preventing the manipulation of the character of income the effect of which is to avoid the purposes of this subsection, and

(C) providing that rules similar to the rules of paragraph (3)(C) shall apply to interest, rents, and royalties received or accrued from entities which would be controlled foreign corporations if they were foreign corporations.

[(e) Repealed. Pub. L. 101–508, title XI, §11801(a)(31), Nov. 5, 1990, 104 Stat. 1388–521]

(f) Recapture of overall foreign loss

(1) General rule

For purposes of this subpart and section 936, in the case of any taxpayer who sustains an overall foreign loss for any taxable year, that portion of the taxpayer's taxable income from sources without the United States for each succeeding taxable year which is equal to the lesser of—

(A) the amount of such loss (to the extent not used under this paragraph in prior taxable years), or

(B) 50 percent (or such larger percent as the taxpayer may choose) of the taxpayer's taxable income from sources without the United States for such succeeding taxable year,

shall be treated as income from sources within the United States (and not as income from sources without the United States).

(2) Overall foreign loss defined

For purposes of this subsection, the term ''overall foreign loss'' means the amount by which the gross income for the taxable year from sources without the United States (whether or not the taxpayer chooses the benefits of this subpart for such taxable year) for such year is exceeded by the sum of the deductions properly apportioned or allocated thereto, except that there shall not be taken into account—

(A) any net operating loss deduction allowable for such year under section 172(a), and

(B) any—

(i) foreign expropriation loss for such year, as defined in section 172(h) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), or

(ii) loss for such year which arises from fire, storm, shipwreck, or other casualty, or from theft,

to the extent such loss is not compensated for by insurance or otherwise.

(3) Dispositions

(A) In general

For purposes of this chapter, if property which has been used predominantly without the United States in a trade or business is disposed of during any taxable year—

(i) the taxpayer, notwithstanding any other provision of this chapter (other than paragraph (1)), shall be deemed to have received and recognized taxable income from sources without the United States in the taxable year of the disposition, by reason of such disposition, in an amount equal to the lesser of the excess of the fair market value of such property over the taxpayer's adjusted basis in such property or the remaining amount of the overall foreign losses which were not used under paragraph (1) for such taxable year or any prior taxable year, and

(ii) paragraph (1) shall be applied with respect to such income by substituting ''100 percent'' for ''50 percent''.

In determining for purposes of this subparagraph whether the predominant use of any property has been without the United States, there shall be taken into account use during the 3-year period ending on the date of the disposition (or, if shorter, the period during which the property has been used in the trade or business).

(B) Disposition defined and special rules

(i) For purposes of this subsection, the term ''disposition'' includes a sale, exchange, distribution, or gift of property whether or not gain or loss is recognized on the transfer.

(ii) Any taxable income recognized solely by reason of subparagraph (A) shall have the same characterization it would have had if the taxpayer had sold or exchanged the property.

(iii) The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect taxable income recognized solely by reason of subparagraph (A).

(C) Exceptions

Notwithstanding subparagraph (B), the term ''disposition'' does not include—

(i) a disposition of property which is not a material factor in the realization of income by the taxpayer, or

(ii) a disposition of property to a domestic corporation in a distribution or transfer described in section 381(a).

(D) Application to certain dispositions of stock in controlled foreign corporation

(i) In general

This paragraph shall apply to an applicable disposition in the same manner as if it were a disposition of property described in subparagraph (A), except that the exception contained in subparagraph (C)(i) shall not apply.

(ii) Applicable disposition

For purposes of clause (i), the term ''applicable disposition'' means any disposition of any share of stock in a controlled foreign corporation in a transaction or series of transactions if, immediately before such transaction or series of transactions, the taxpayer owned more than 50 percent (by vote or value) of the stock of the controlled foreign corporation. Such term shall not include a disposition described in clause (iii) or (iv), except that clause (i) shall apply to any gain recognized on any such disposition.

(iii) Exception for certain exchanges where ownership percentage retained

A disposition shall not be treated as an applicable disposition under clause (ii) if it is part of a transaction or series of transactions—

(I) to which section 351 or 721 applies, or under which the transferor receives stock in a foreign corporation in exchange for the stock in the controlled foreign corporation and the stock received is exchanged basis property (as defined in section 7701(a)(44)), and

(II) immediately after which, the transferor owns (by vote or value) at least the same percentage of stock in the controlled foreign corporation (or, if the controlled foreign corporation is not in existence after such transaction or series of transactions, in another foreign corporation stock in[2] which was received by the transferor in exchange for stock in the controlled foreign corporation) as the percentage of stock in the controlled foreign corporation which the taxpayer owned immediately before such transaction or series of transactions.

(iv) Exception for certain asset acquisitions

A disposition shall not be treated as an applicable disposition under clause (ii) if it

[2] So in original.

is part of a transaction or series of transactions in which the taxpayer (or any member of an affiliated group of corporations filing a consolidated return under section 1501 which includes the taxpayer) acquires the assets of a controlled foreign corporation in exchange for the shares of the controlled foreign corporation in a liquidation described in section 332 or a reorganization described in section 368(a)(1).

(v) Controlled foreign corporation

For purposes of this subparagraph, the term ''controlled foreign corporation'' has the meaning given such term by section 957.

(vi) Stock ownership

For purposes of this subparagraph, ownership of stock shall be determined under the rules of subsections (a) and (b) of section 958.

(4) Accumulation distributions of foreign trust

For purposes of this chapter, in the case of amounts of income from sources without the United States which are treated under section 666 (without regard to subsections (b) and (c) thereof if the taxpayer chose to take a deduction with respect to the amounts described in such subsections under section 667(d)(1)(B)) as having been distributed by a foreign trust in a preceding taxable year, that portion of such amounts equal to the amount of any overall foreign loss sustained by the beneficiary in a year prior to the taxable year of the beneficiary in which such distribution is received from the trust shall be treated as income from sources within the United States (and not income from sources without the United States) to the extent that such loss was not used under this subsection in prior taxable years, or in the current taxable year, against other income of the beneficiary.

(5) Treatment of separate limitation losses

(A) In general

The amount of the separate limitation losses for any taxable year shall reduce income from sources within the United States for such taxable year only to the extent the aggregate amount of such losses exceeds the aggregate amount of the separate limitation incomes for such taxable year.

(B) Allocation of losses

The separate limitation losses for any taxable year (to the extent such losses do not exceed the separate limitation incomes for such year) shall be allocated among (and operate to reduce) such incomes on a proportionate basis.

(C) Recharacterization of subsequent income

If—

(i) a separate limitation loss from any income category (hereinafter in this subparagraph referred to as ''the loss category'') was allocated to income from any other category under subparagraph (B), and

(ii) the loss category has income for a subsequent taxable year,

such income (to the extent it does not exceed the aggregate separate limitation losses from the loss category not previously recharacterized under this subparagraph) shall be recharacterized as income from such other category in proportion to the prior reductions under subparagraph (B) in such other category not previously taken into account under this subparagraph. Nothing in the preceding sentence shall be construed as recharacterizing any tax.

(D) Special rules for losses from sources in the United States

Any loss from sources in the United States for any taxable year (to the extent such loss does not exceed the separate limitation incomes from such year) shall be allocated among (and operate to reduce) such incomes on a proportionate basis. This subparagraph shall be applied after subparagraph (B).

(E) Definitions

For purposes of this paragraph—

(i) Income category

The term ''income category'' means each separate category of income described in subsection (d)(1).

(ii) Separate limitation income

The term ''separate limitation income'' means, with respect to any income category, the taxable income from sources outside the United States, separately computed for such category.

(iii) Separate limitation loss

The term ''separate limitation loss'' means, with respect to any income category, the loss from such category determined under the principles of section 907(c)(4)(B).

(F) Dispositions

If any separate limitation loss for any taxable year is allocated against any separate limitation income for such taxable year, except to the extent provided in regulations, rules similar to the rules of paragraph (3) shall apply to any disposition of property if gain from such disposition would be in the income category with respect to which there was such separate limitation loss.

(g) Recharacterization of overall domestic loss

(1) General rule

For purposes of this subpart and section 936, in the case of any taxpayer who sustains an overall domestic loss for any taxable year beginning after December 31, 2006, that portion of the taxpayer's taxable income from sources within the United States for each succeeding taxable year which is equal to the lesser of—

(A) the amount of such loss (to the extent not used under this paragraph in prior taxable years), or

(B) 50 percent of the taxpayer's taxable income from sources within the United States for such succeeding taxable year,

shall be treated as income from sources without the United States (and not as income from sources within the United States).

(2) Overall domestic loss

For purposes of this subsection—

(A) In general

The term ''overall domestic loss'' means—

(i) with respect to any qualified taxable year, the domestic loss for such taxable year to the extent such loss offsets taxable income from sources without the United States for the taxable year or for any preceding qualified taxable year by reason of a carryback, and

(ii) with respect to any other taxable year, the domestic loss for such taxable year to the extent such loss offsets taxable income from sources without the United States for any preceding qualified taxable year by reason of a carryback.

(B) Domestic loss

For purposes of subparagraph (A), the term ''domestic loss'' means the amount by which the gross income for the taxable year from sources within the United States is exceeded by the sum of the deductions properly apportioned or allocated thereto (determined without regard to any carryback from a subsequent taxable year).

(C) Qualified taxable year

For purposes of subparagraph (A), the term ''qualified taxable year'' means any taxable year for which the taxpayer chose the benefits of this subpart.

(3) Characterization of subsequent income

(A) In general

Any income from sources within the United States that is treated as income from sources without the United States under paragraph (1) shall be allocated among and increase the income categories in proportion to the loss from sources within the United States previously allocated to those income categories.

(B) Income category

For purposes of this paragraph, the term ''income category'' has the meaning given such term by subsection (f)(5)(E)(i).

(4) Coordination with subsection (f)

The Secretary shall prescribe such regulations as may be necessary to coordinate the provisions of this subsection with the provisions of subsection (f).

(h) Source rules in case of United States-owned foreign corporations

(1) In general

The following amounts which are derived from a United States-owned foreign corporation and which would be treated as derived from sources outside the United States without regard to this subsection shall, for purposes of this section, be treated as derived from sources within the United States to the extent provided in this subsection:

(A) Any amount included in gross income under—

(i) section 951(a) (relating to amounts included in gross income of United States shareholders), or

(ii) section 1293 (relating to current taxation of income from qualified funds).

(B) Interest.

(C) Dividends.

(2) Subpart F and passive foreign investment company inclusions

Any amount described in subparagraph (A) of paragraph (1) shall be treated as derived from sources within the United States to the extent such amount is attributable to income of the United States-owned foreign corporation from sources within the United States.

(3) Certain interest allocable to United States source income

Any interest which—

(A) is paid or accrued by a United States-owned foreign corporation during any taxable year,

(B) is paid or accrued to a United States shareholder (as defined in section 951(b)) or a related person (within the meaning of section 267(b)) to such a shareholder, and

(C) is properly allocable (under regulations prescribed by the Secretary) to income of such foreign corporation for the taxable year from sources within the United States,

shall be treated as derived from sources within the United States.

(4) Dividends

(A) In general

The United States source ratio of any dividend paid or accrued by a United States-owned foreign corporation shall be treated as derived from sources within the United States.

(B) United States source ratio

For purposes of subparagraph (A), the term ''United States source ratio'' means, with respect to any dividend paid out of the earnings and profits for any taxable year, a fraction—

(i) the numerator of which is the portion of the earnings and profits for such taxable year from sources within the United States, and

(ii) the denominator of which is the total amount of earnings and profits for such taxable year.

(5) Exception where United States-owned foreign corporation has small amount of United States source income

Paragraph (3) shall not apply to interest paid or accrued during any taxable year (and paragraph (4) shall not apply to any dividends paid out of the earnings and profits for such taxable year) if—

(A) the United States-owned foreign corporation has earnings and profits for such taxable year, and

(B) less than 10 percent of such earnings and profits is attributable to sources within the United States.

For purposes of the preceding sentence, earnings and profits shall be determined without any reduction for interest described in paragraph (3) (determined without regard to subparagraph (C) thereof).

(6) United States-owned foreign corporation

For purposes of this subsection, the term ''United States-owned foreign corporation'' means any foreign corporation if 50 percent or more of—

(A) the total combined voting power of all classes of stock of such corporation entitled to vote, or

(B) the total value of the stock of such corporation,

is held directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) by United States persons (as defined in section 7701(a)(30)).

(7) Dividend

For purposes of this subsection, the term ''dividend'' includes any gain treated as ordinary income under section 1246[3] or as a dividend under section 1248.

(8) Coordination with subsection (f)

This subsection shall be applied before subsection (f).

(9) Treatment of certain domestic corporations

In the case of any dividend treated as not from sources within the United States under section 861(a)(2)(A), the corporation paying such dividend shall be treated for purposes of this subsection as a United States-owned foreign corporation.

(10) Coordination with treaties

(A) In general

If—

(i) any amount derived from a United States-owned foreign corporation would be treated as derived from sources within the United States under this subsection by reason of an item of income of such United States-owned foreign corporation,

(ii) under a treaty obligation of the United States (applied without regard to this subsection and by treating any amount included in gross income under section 951(a)(1) as a dividend), such amount would be treated as arising from sources outside the United States, and

(iii) the taxpayer chooses the benefits of this paragraph,

this subsection shall not apply to such amount to the extent attributable to such item of income (but subsections (a), (b), and (c) of this section and sections 902, 907, and 960 shall be applied separately with respect to such amount to the extent so attributable).

(B) Special rule

Amounts included in gross income under section 951(a)(1) shall be treated as a dividend under subparagraph (A)(ii) only if dividends paid by each corporation (the stock in which is taken into account in determining whether the shareholder is a United States shareholder in the United States-owned foreign corporation), if paid to the United States shareholder, would be treated under a treaty obligation of the United States as arising from sources outside the United States (applied without regard to this subsection).

(11) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate for purposes of this subsection, including—

(A) regulations for the application of this subsection in the case of interest or dividend payments through 1 or more entities, and

(B) regulations providing that this subsection shall apply to interest paid or accrued to any person (whether or not a United States shareholder).

(i) Coordination with nonrefundable personal credits

In the case of any taxable year of an individual to which section 26(a)(2) does not apply, for purposes of subsection (a), the tax against which the credit is taken is such tax reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter (other than sections 24, 25A(i), 25B, 30 30B,,[2] and 30D).

(j) Limitation on use of deconsolidation to avoid foreign tax credit limitations

If 2 or more domestic corporations would be members of the same affiliated group if—

(1) section 1504(b) were applied without regard to the exceptions contained therein, and

(2) the constructive ownership rules of section 1563(e) applied for purposes of section 1504(a),

the Secretary may by regulations provide for resourcing the income of any of such corporations or for modifications to the consolidated return regulations to the extent that such resourcing or modifications are necessary to prevent the avoidance of the provisions of this subpart.

(k) Certain individuals exempt

(1) In general

In the case of an individual to whom this subsection applies for any taxable year—

(A) the limitation of subsection (a) shall not apply,

(B) no taxes paid or accrued by the individual during such taxable year may be deemed paid or accrued under subsection (c) in any other taxable year, and

(C) no taxes paid or accrued by the individual during any other taxable year may be deemed paid or accrued under subsection (c) in such taxable year.

(2) Individuals to whom subsection applies

This subsection shall apply to an individual for any taxable year if—

(A) the entire amount of such individual's gross income for the taxable year from sources without the United States consists of qualified passive income,

(B) the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year does not exceed $300 ($600 in the case of a joint return), and

(C) such individual elects to have this subsection apply for the taxable year.

[3] See References in Text note below.

(3) Definitions

For purposes of this subsection—

(A) Qualified passive income

The term ''qualified passive income'' means any item of gross income if—

(i) such item of income is passive income (as defined in subsection (d)(2)(B) without regard to clause (iii) thereof), and

(ii) such item of income is shown on a payee statement furnished to the individual.

(B) Creditable foreign taxes

The term ''creditable foreign taxes'' means any taxes for which a credit is allowable under section 901; except that such term shall not include any tax unless such tax is shown on a payee statement furnished to such individual.

(C) Payee statement

The term ''payee statement'' has the meaning given to such term by section 6724(d)(2).

(D) Estates and trusts not eligible

This subsection shall not apply to any estate or trust.

(*l*) Cross reference

(1) For increase of limitation under subsection (a) for taxes paid with respect to amounts received which were included in the gross income of the taxpayer for a prior taxable year as a United States shareholder with respect to a controlled foreign corporation, see section 960(b).

(2) For modification of limitation under subsection (a) for purposes of determining the amount of credit which can be taken against the alternative minimum tax, see section 59(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 287; Pub. L. 85–866, title I, § 42(a), Sept. 2, 1958, 72 Stat. 1639; Pub. L. 86–780, § 1, Sept. 14, 1960, 74 Stat. 1010; Pub. L. 87–834, §§ 10(a), 12(b)(2), Oct. 16, 1962, 76 Stat. 1002, 1031; Pub. L. 88–272, title II, § 234(b)(6), Feb. 26, 1964, 78 Stat. 116; Pub. L. 89–809, title I, § 106(c)(1), Nov. 13, 1966, 80 Stat. 1570; Pub. L. 91–172, title V, § 506(b), Dec. 30, 1969, 83 Stat. 635; Pub. L. 92–178, title V, § 502(b)(2)–(4), Dec. 10, 1971, 85 Stat. 549; Pub. L. 94–455, title V, § 503(b)(1), title X, §§ 1031(a), 1032(a), 1034(a), 1051(e), title XIX, § 1901(b)(10)(B), Oct. 4, 1976, 90 Stat. 1562, 1620, 1624, 1629, 1646, 1795; Pub. L. 95–30, title I, § 102(b)(11), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title IV, §§ 403(c)(4), 421(e)(6), title VII, § 701(q)(2), (u)(2)(A)–(C), (3)(A), (4)(A), (B), (8)(C), Nov. 6, 1978, 92 Stat. 2868, 2876, 2910, 2913, 2916; Pub. L. 96–222, title I, § 104(a)(3)(D), Apr. 1, 1980, 94 Stat. 215; Pub. L. 97–248, title II, § 211(c)(2), Sept. 3, 1982, 96 Stat. 449; Pub. L. 98–21, title I, § 122(c)(1), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title I, §§ 121(a), 122(a), title IV, § 474(r)(21), title VIII, § 801(d)(2), July 18, 1984, 98 Stat. 638, 643, 843, 995; Pub. L. 99–514, title I, § 104(b)(13), title VII, § 701(e)(4)(H), title XII, §§ 1201(a), (b), (d)(1)–(3), 1203(a), 1211(b)(3), 1235(f)(4), title XVIII, §§ 1810(a)(1)(A), (b)(1)–(4)(A), 1876(d)(2), 1899A(24), Oct. 22, 1986, 100 Stat. 2105, 2343, 2520, 2525, 2531, 2536, 2575, 2821, 2823, 2899, 2959; Pub. L. 100–647, title I, §§ 1003(b)(2), 1012(a)(1)(A), (2)–(4), (6)–(11), (c), (p)(11), (29), (q)(12), (bb)(4)(A), title II, § 2004(*l*), Nov. 10, 1988, 102 Stat. 3383, 3493–3497, 3517, 3521, 3525, 3534, 3606; Pub. L. 101–239, title VII, §§ 7402(a), 7811(i)(1), Dec. 19, 1989, 103 Stat. 2357, 2409; Pub. L. 101–508, title XI, §§ 11101(d)(5), 11801(a)(31), Nov. 5, 1990, 104 Stat. 1388–405, 1388–521; Pub. L. 103–66, title XIII, §§ 13227(d), 13235(a)(2), Aug. 10, 1993, 107 Stat. 494, 504; Pub. L. 104–188, title I, §§ 1501(b)(1), (12), 1703(i)(1), 1704(t)(36), Aug. 20, 1996, 110 Stat. 1825, 1826, 1876, 1889; Pub. L. 105–34, title III, § 311(c)(3), title XI, §§ 1101(a), 1105(a), (b), 1111(b), 1163(b), Aug. 5, 1997, 111 Stat. 835, 963, 967, 969, 987; Pub. L. 106–170, title V, § 501(b)(2), Dec. 17, 1999, 113 Stat. 1919; Pub. L. 107–16, title II, §§ 201(b)(2)(G), 202(f)(2)(C), title VI, § 618(b)(2)(D), June 7, 2001, 115 Stat. 46, 49, 108; Pub. L. 107–147, title IV, § 417(23)(B), title VI, § 601(b)(1), Mar. 9, 2002, 116 Stat. 57, 59; Pub. L. 108–311, title III, § 312(b)(1), Oct. 4, 2004, 118 Stat. 1181; Pub. L. 108–357, title IV, §§ 402(a), 403(a)–(b)(5), 404(a)–(f), 413(c)(14), (15), 417(a), title VIII, § 895(a), Oct. 22, 2004, 118 Stat. 1491–1495, 1508, 1512, 1647; Pub. L. 109–135, title IV, §§ 402(i)(3)(G), 403(k), (*o*), Dec. 21, 2005, 119 Stat. 2614, 2625, 2626; Pub. L. 110–172, § 11(f)(3), (g)(10), Dec. 29, 2007, 121 Stat. 2489, 2490; Pub. L. 111–5, div. B, title I, §§ 1004(b)(5), 1142(b)(1)(E), 1144(b)(1)(E), Feb. 17, 2009, 123 Stat. 314, 330, 332; Pub. L. 111–148, title X, § 10909(b)(2)(K), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111–226, title II, §§ 213(a), 217(c)(2), Aug. 10, 2010, 124 Stat. 2398, 2402; Pub. L. 111–312, title I, § 101(b)(1), Dec. 17, 2010, 124 Stat. 3298.)

AMENDMENT OF SECTION

For termination of amendment by section 10909(c) of Pub. L. 111–148, see Effective and Termination Dates of 2010 Amendment note below.

For termination of amendment by section 402(i)(3)(H) of Pub. L. 109–135, see Effective and Termination Dates of 2005 Amendment note below.

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

Subparagraph (E)(iii) of subsection (d)(2) of this section, referred to in subsec. (d)(2)(B)(ii), was redesignated as subparagraph (E)(ii) by Pub. L. 108–357, title IV, § 403(b)(4)(B), Oct. 22, 2004, 118 Stat. 1494.

Paragraph (3) of subsection (d) of this section, referred to in subsec. (d)(2)(B)(ii), was amended generally by Pub. L. 108–357, title IV, § 404(f)(4), Oct. 22, 2004, 118 Stat. 1496, and as so amended, no longer contains a subpar. (I).

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (d)(2)(B)(v), is Pub. L. 106–519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (d)(2)(J), is the date of the enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

Section 172(h), referred to in subsec. (f)(2)(B)(i), was repealed by Pub. L. 101–508, title XI, § 11811(b)(1), Nov. 5, 1990, 104 Stat. 1388–532.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (f)(2)(B)(i), is the date of enactment of Pub. L. 101–508, title XI, which was approved Nov. 5, 1990.

Section 1246, referred to in subsec. (h)(7), was repealed by Pub. L. 108–357, title IV, § 413(a)(2), Oct. 22, 2004, 118 Stat. 1506.

AMENDMENTS

2010—Subsec. (d)(6), (7). Pub. L. 111–226, §213(a), added par. (6) and redesignated former par. (6) as (7).

Subsec. (h)(9). Pub. L. 111–226, §217(c)(2), amended par. (9) generally. Prior to amendment, text read as follows: ''For purposes of this subsection—

''(A) in the case of interest treated as not from sources within the United States under section 861(a)(1)(A), the corporation paying such interest shall be treated as a United States-owned foreign corporation, and

''(B) in the case of any dividend treated as not from sources within the United States under section 861(a)(2)(A), the corporation paying such dividend shall be treated as a United States-owned foreign corporation.''

Subsec. (i). Pub. L. 111–148, §10909(b)(2)(K), (c), as amended by Pub. L. 111–312, temporarily struck out ''23,'' after ''than sections''. See Effective and Termination Dates of 2010 Amendment note below.

2009—Subsec. (i). Pub. L. 111–5, §1144(b)(1)(E), inserted ''30B,'' after ''30''.

Pub. L. 111–5, §1142(b)(1)(E), substituted ''25B, 30, and 30D'' for ''and 25B''.

Pub. L. 111–5, §1004(b)(5), inserted ''25A(i),'' after ''24,''.

2007—Subsec. (d)(2)(B)(v). Pub. L. 110–172, §11(g)(10), inserted ''and'' at end of subcl. (I), redesignated subcl. (III) as (II), substituted ''a former FSC (as defined in section 922)'' for ''a FSC (or a former FSC)'' in subcl. (II), struck out former subcl. (II), which read as follows: ''taxable income attributable to foreign trade income (within the meaning of section 923(b)), and'', and added concluding provisions.

Subsec. (f)(3)(D)(iv). Pub. L. 110–172, §11(f)(3), substituted ''an affiliated group'' for ''a controlled group''.

2005—Subsec. (d)(2)(D). Pub. L. 109–135, §403(*o*), inserted ''as in effect before its repeal'' after ''section 954(f)''.

Subsec. (g)(2). Pub. L. 109–135, §403(k), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''For purposes of this subsection—

''(A) IN GENERAL.—The term 'overall domestic loss' means any domestic loss to the extent such loss offsets taxable income from sources without the United States for the taxable year or for any preceding taxable year by reason of a carryback. For purposes of the preceding sentence, the term 'domestic loss' means the amount by which the gross income for the taxable year from sources within the United States is exceeded by the sum of the deductions properly apportioned or allocated thereto (determined without regard to any carryback from a subsequent taxable year).

''(B) TAXPAYER MUST HAVE ELECTED FOREIGN TAX CREDIT FOR YEAR OF LOSS.—The term 'overall domestic loss' shall not include any loss for any taxable year unless the taxpayer chose the benefits of this subpart for such taxable year.''

Subsec. (i). Pub. L. 109–135, §402(i)(3)(G), (H), temporarily reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of an individual, for purposes of subsection (a), the tax against which the credit is taken is such tax reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter (other than sections 23, 24, and 25B). This subsection shall not apply to taxable years beginning during 2000, 2001, 2002, 2003, 2004, or 2005.'' See Effective and Termination Dates of 2005 Amendment note below.

2004—Subsec. (c). Pub. L. 108–357, §417(a), struck out ''in the second preceding taxable year,'' before ''in the first preceding taxable year'' and substituted ''and in any of the first 10'' for '', and in the first, second, third, fourth, or fifth''.

Subsec. (d)(1). Pub. L. 108–357, §404(a), reenacted heading without change and amended text of par. (1) generally, substituting provisions relating to applicability of subsecs. (a), (b), and (c) and sections 902, 907, and 960 to passive category income and general category income, for provisions relating to applicability of subsecs. (a), (b), and (c) and sections 902, 907, and 960 to passive income, high withholding tax interest, financial services income, shipping income, certain dividends from a DISC or former DISC, taxable income attributable to foreign trade income, certain distributions from a FSC or a former FSC, and income other than income previously described.

Subsec. (d)(1)(E). Pub. L. 108–357, §403(b)(1), struck out subpar. (E) which read as follows: ''in the case of a corporation, dividends from noncontrolled section 902 corporations out of earnings and profits accumulated in taxable years beginning before January 1, 2003,''.

Subsec. (d)(2)(A). Pub. L. 108–357, §404(b), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (d)(2)(A)(ii). Pub. L. 108–357, §413(c)(14), reenacted heading without change and amended text of cl. (ii) generally. Prior to amendment, text read as follows: ''Except as provided in clause (iii), the term 'passive income' includes any amount includible in gross income under section 551 or, except as provided in subparagraph (E)(iii) or paragraph (3)(I), section 1293 (relating to certain passive foreign investment companies).''

Subsec. (d)(2)(B). Pub. L. 108–357, §404(b), redesignated subpar. (A) as (B) and struck out former subpar. (B), which defined the term ''high withholding tax interest''.

Subsec. (d)(2)(B)(iii). Pub. L. 108–357, §404(f)(1), redesignated subcls. (II) and (III) as (I) and (II), respectively, and struck out former subcl. (I) which read as follows: ''any income described in a subparagraph of paragraph (1) other than subparagraph (A),''.

Subsec. (d)(2)(B)(v). Pub. L. 108–357, §404(c), added cl. (v).

Subsec. (d)(2)(C). Pub. L. 108–357, §404(d), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (d)(2)(C)(iii). Pub. L. 108–357, §403(b)(2), inserted ''and'' at end of subcl. (I), redesignated subcl. (III) as (II), and struck out former subcl. (II) which read as follows: ''any dividend from a noncontrolled section 902 corporation out of earnings and profits accumulated in taxable years beginning before January 1, 2003, and''.

Subsec. (d)(2)(D). Pub. L. 108–357, §404(d), redesignated subpar. (C) as (D) and struck out heading and text of former subpar. (D). Text read as follows: ''The term 'shipping income' means any income received or accrued by any person which is of a kind which would be foreign base company shipping income (as defined in section 954(f) as in effect before its repeal). Such term does not include any financial services income.''

Pub. L. 108–357, §403(b)(3), substituted ''Such term does not include any financial services income'' for ''Such term does not include any dividend from a noncontrolled section 902 corporation out of earnings and profits accumulated in taxable years beginning before January 1, 2003 and does not include any financial services income''.

Subsec. (d)(2)(D)(i). Pub. L. 108–357, §404(f)(2), inserted ''or'' at end of subcl. (I), added subcl. (II), and struck out former subcls. (II) and (III) which read as follows:

''(II) passive income (determined without regard to subclauses (I) and (III) of subparagraph (A)(iii)), or

''(III) export financing interest which (but for subparagraph (B)(ii)) would be high withholding tax interest.''

Subsec. (d)(2)(D)(iii). Pub. L. 108–357, §404(f)(3), which directed striking out of cl. (iii) ''as so redesignated and amended by section 404(b)(3)'', was executed by striking out heading and text of cl. (iii) as amended by section 403(b)(2) and redesignated by section 404(d), to reflect the probable intent of Congress. Text read as follows: ''The term 'financial services income' does not include—

''(I) any high withholding tax interest, and

''(II) any export financing interest not described in clause (i)(III).''

Subsec. (d)(2)(E)(i). Pub. L. 108–357, §403(b)(4)(A), inserted ''or (4)'' after ''paragraph (3)''.

Subsec. (d)(2)(E)(ii), (iii). Pub. L. 108–357, § 403(b)(4)(B), redesignated cl. (iii) as (ii) and struck out heading and text of former cl. (ii). Text read as follows: ''If a foreign corporation is a noncontrolled section 902 corporation with respect to the taxpayer, taxes on high withholding tax interest (to the extent imposed at a rate in excess of 5 percent) shall not be treated as foreign taxes for purposes of determining the amount of foreign taxes deemed paid by the taxpayer under section 902.''

Subsec. (d)(2)(E)(iv). Pub. L. 108–357, § 403(b)(4)(B), struck out heading and text of cl. (iv). Text read as follows: ''All noncontrolled section 902 corporations which are not passive foreign investment companies (as defined in section 1297) shall be treated as one noncontrolled section 902 corporation for purposes of paragraph (1).''

Subsec. (d)(2)(H) to (J). Pub. L. 108–357, § 404(e), added subpar. (H) and redesignated former subpars. (H) and (I) as (I) and (J), respectively.

Subsec. (d)(2)(K). Pub. L. 108–357, § 404(f)(5), added subpar. (K).

Subsec. (d)(3). Pub. L. 108–357, § 404(f)(4), reenacted heading without change and amended text of par. (3) generally, substituting provisions consisting of subpars. (A) to (H) for former subpars. (A) to (I) which contained similar provisions.

Subsec. (d)(3)(F)(i). Pub. L. 108–357, § 403(b)(5), substituted ''or (D)'' for ''(D), or (E)''.

Subsec. (d)(4). Pub. L. 108–357, § 403(a), reenacted heading without change and amended text of par. (4) generally, substituting provisions relating to dividends from noncontrolled section 902 corporations, earnings and profits of controlled foreign corporations, and setting forth special rules, for provisions relating to treatment of applicable dividends, defining the term ''applicable dividend'', and setting forth special rules.

Subsec. (f)(3)(D). Pub. L. 108–357, § 895(a), added subpar. (D).

Subsec. (g). Pub. L. 108–357, § 402(a), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 108–357, § 402(a), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Pub. L. 108–311 substituted ''2003, 2004, or 2005'' for ''or 2003''.

Subsec. (h)(1)(A). Pub. L. 108–357, § 413(c)(15)(A), inserted ''or'' at end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: ''section 551 (relating to foreign personal holding company income taxed to United States shareholders), or''.

Subsec. (h)(2). Pub. L. 108–357, § 413(c)(15)(B), struck out ''foreign personal holding or'' before ''passive foreign investment'' in heading.

Subsecs. (i), (j). Pub. L. 108–357, § 402(a), redesignated subsecs. (h) and (i) as (i) and (j), respectively. Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 108–357, § 402(a), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Subsec. (k)(3)(A)(i). Pub. L. 108–357, § 404(f)(6), which directed amendment of subsec. (j)(3)(A)(i) by substituting ''subsection (d)(2)(B)'' for ''subsection (d)(2)(A)'', was executed to subsec. (k)(3)(A)(i) to reflect the probable intent of Congress and the amendment by Pub. L. 108–357, § 402(a). See above.

Subsec. (*l*). Pub. L. 108–357, § 402(a), redesignated subsec. (k) as (*l*).

2002—Subsec. (h). Pub. L. 107–147, § 601(b)(1), substituted ''during 2000, 2001, 2002, or 2003'' for ''during 2000 or 2001''.

Pub. L. 107–147, § 417(23)(B), amended directory language of Pub. L. 107–16, § 618(b)(2)(D). See 2001 Amendment note below.

2001—Subsec. (h). Pub. L. 107–16, § 618(b)(2)(D), as amended by Pub. L. 107–147, § 417(23)(B), substituted '', 24, and 25B'' for ''and 24''.

Pub. L. 107–16, §§ 202(f)(2)(C), 901, temporarily substituted ''sections 23 and 24'' for ''section 24''. See Effective and Termination Dates of 2001 Amendment note below.

Pub. L. 107–16, §§ 201(b)(2)(G), 901, inserted ''(other than section 24)'' after ''chapter''. See Effective and Termination Dates of 2001 Amendment note below.

1999—Subsec. (h). Pub. L. 106–170 inserted at end ''This subsection shall not apply to taxable years beginning during 2000 or 2001.''

1997—Subsec. (b)(2)(C). Pub. L. 105–34, § 311(c)(3), added subpar. (C).

Subsec. (d)(1)(E). Pub. L. 105–34, § 1105(a)(1), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''in the case of a corporation, dividends from each noncontrolled section 902 corporation,''.

Subsec. (d)(2)(C)(i)(II). Pub. L. 105–34, § 1163(b), substituted ''subclauses (I) and (III)'' for ''subclause (I)''.

Subsec. (d)(2)(C)(iii)(II), (D). Pub. L. 105–34, § 1105(a)(3), inserted ''out of earnings and profits accumulated in taxable years beginning before January 1, 2003'' after ''corporation''.

Subsec. (d)(2)(E)(i). Pub. L. 105–34, § 1111(b), struck out ''and except as provided in regulations, the taxpayer was a United States shareholder in such corporation'' after ''was a controlled foreign corporation''.

Subsec. (d)(2)(E)(iv). Pub. L. 105–34, § 1105(a)(2), added cl. (iv).

Subsec. (d)(4) to (6). Pub. L. 105–34, § 1105(b), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsecs. (j), (k). Pub. L. 105–34, § 1101(a), added subsec. (j) and redesignated former subsec. (j) as (k).

1996—Subsec. (d)(3)(G). Pub. L. 104–188, § 1501(b)(1), (12), amended subpar. (G) identically, substituting ''section 951(a)(1)(B)'' for ''subparagraph (B) or (C) of section 951(a)(1)''.

Pub. L. 104–188, § 1703(i)(1), substituted ''subparagraph (B) or (C) of section 951(a)(1)'' for ''section 951(a)(1)(B)''.

Subsec. (f)(2)(B)(i). Pub. L. 104–188, § 1704(t)(36), inserted ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' after ''section 172(h)''.

1993—Subsec. (b)(4). Pub. L. 103–66, § 13227(d), inserted before period at end ''(without regard to subsections (a)(4) and (i) thereof)''.

Subsec. (d)(2)(A)(iii)(II) to (IV). Pub. L. 103–66, § 13235(a)(2), inserted ''and'' at end of subcl. II, substituted ''income.'' for ''income, and'' in subcl. III, and struck out subcl. (IV) which read as follows: ''any foreign oil and gas extraction income (as defined in section 907(c)).''

1990—Subsec. (b)(3)(D)(i). Pub. L. 101–508, § 11101(d)(5)(A), substituted ''subsection (h)'' for ''subsection (j)''.

Subsec. (b)(3)(E)(iii)(I). Pub. L. 101–508, § 11101(d)(5)(B), substituted ''section 1(h)'' for ''section 1(j)''.

Subsec. (e). Pub. L. 101–508, § 11801(a)(31), struck out subsec. (e) which related to transitional rules for carrybacks and carryovers for taxpayers on the per-country limitation.

1989—Subsec. (d)(1)(H). Pub. L. 101–239, § 7811(i)(1), substituted ''interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income (as defined in section 923(b))'' for ''qualified interest and carrying charges (as defined in section 245(c))''.

Subsecs. (i), (j). Pub. L. 101–239, § 7402(a), added subsec. (i) and redesignated former subsec. (i) as (j).

1988—Subsec. (b)(2). Pub. L. 100–647, § 1003(b)(2)(A), amended par. (2) generally, substituting general provisions and provisions setting special rules where there is a capital gain rate differential for provisions for corporations and for other taxpayers.

Subsec. (b)(3)(D). Pub. L. 100–647, § 1003(b)(2)(B), added subpar. (D) and struck out former subpar. (D), Rate differential portion, which read as follows: ''The 'rate differential portion' of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as the excess of the highest rate of tax specified in section 11(b) over the alternative rate of tax under section 1201(a) bears to the highest rate of tax specified in section 11(b).''

Subsec. (b)(3)(D)(ii). Pub. L. 100–647, § 2004(*l*), substituted ''section 11(b)(1)'' for ''section 11(b)''.

Subsec. (b)(3)(E). Pub. L. 100–647, §1003(b)(2)(B), added subpar. (E).

Subsec. (d)(1)(E). Pub. L. 100–647, §1012(a)(11), inserted ''in the case of a corporation,'' before ''dividends''.

Subsec. (d)(2)(A)(ii). Pub. L. 100–647, §1012(a)(6)(A), (p)(29)(A), substituted ''Except as provided in clause (iii), the term'' for ''The term'' and ''or, except as provided in subparagraph (E)(iii) or paragraph (3)(I), section 1293'' for ''or section 1293''.

Subsec. (d)(2)(A)(iv). Pub. L. 100–647, §1012(a)(6)(B), added cl. (iv).

Subsec. (d)(2)(B)(iii). Pub. L. 100–647, §1012(a)(8), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''The Secretary may by regulations provide that amounts (not otherwise high withholding tax interest) shall be treated as high withholding tax interest where necessary to prevent avoidance of the purposes of this subparagraph.''

Subsec. (d)(2(C). Pub. L. 100–647, §1012(a)(1)(A), amended subpar. (C) generally, revising and restating as cls. (i) to (iii) provisions of former cls. (i) to (iv).

Subsec. (d)(2)(D). Pub. L. 100–647, §1012(a)(2), provided for exclusion from term ''shipping income'' any dividend from a noncontrolled section 902 corporation and any financial services income.

Subsec. (d)(2)(E)(i). Pub. L. 100–647, §1012(a)(10), inserted ''and except as provided in regulations, the taxpayer was a United States shareholder in such corporation'' before period at end.

Subsec. (d)(2)(E)(iii). Pub. L. 100–647, §1012(p)(29)(B), added cl. (iii).

Subsec. (d)(2)(I)(ii). Pub. L. 100–647, §1012(a)(9), substituted ''except that—'' for ''except to the extent that—'', added subcls. (I) to (III), and struck out former subcls. (I) and (II) which read as follows:

''(I) the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to shipping income, or

''(II) in the case of an entity meeting the requirements of subparagraph (C)(ii), the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to financial services income, and''.

Subsec. (d)(3)(E). Pub. L. 100–647, §1012(a)(4), inserted first sentence, struck out former first sentence which read ''If a controlled foreign corporation meets the requirements of section 954(b)(3)(A) (relating to de minimis rule) for any taxable year, for purposes of this paragraph, none of its income for such taxable year shall be treated as income in a separate category.'', and in second sentence substituted ''passive income'' for ''income (other than high withholding tax interest and dividends from a noncontrolled section 902 corporation)''.

Subsec. (d)(3)(F). Pub. L. 100–647, §1012(a)(7), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''For purposes of this paragraph, the term 'separate category' means any category of income described in subparagraph (A), (B), (C), (D), or (E) of paragraph (1).''

Subsec. (d)(3)(H). Pub. L. 100–647, §1012(a)(3), added subpar. (H).

Subsec. (d)(3)(I). Pub. L. 100–647, §1012(p)(11), added subpar. (I).

Subsec. (f)(5)(F). Pub. L. 100–647, §1012(c), added subpar. (F).

Subsec. (g)(9)(A). Pub. L. 100–647, §1012(q)(12), substituted ''861(a)(1)(A)'' for ''861(a)(1)(B)''.

Subsec. (g)(10), (11). Pub. L. 100–647, §1012(bb)(4)(A), added par. (10) and redesignated former par. (10) as (11).

1986—Subsec. (a). Pub. L. 99–514, §104(b)(13), struck out last sentence ''For purposes of the preceding sentence, in the case of an individual the entire taxable income shall be reduced by an amount equal to the zero bracket amount.''

Subsec. (b)(3)(C). Pub. L. 99–514, §1211(b)(3), redesignated subpar. (E) as (C) and struck out former subpar. (C), exception for gain from the sale of certain personal property, which read as follows: ''There shall be included as gain from sources within the United States any gain from sources without the United States from the sale or exchange of a capital asset which is personal property which—

''(i) in the case of an individual, is sold or exchanged outside of the country (or possession) of the individual's residence,

''(ii) in the case of a corporation, is stock in a second corporation sold or exchanged other than in a country (or possession) in which such second corporation derived more than 50 percent of its gross income for the 3-year period ending with the close of such second corporation's taxable year immediately preceding the year during which the sale or exchange occurred, or

''(iii) in the case of any taxpayer, is personal property (other than stock in a corporation) sold or exchanged other than in a country (or possession) in which such property is used in a trade or business of the taxpayer or in which such taxpayer derived more than 50 percent of its gross income for the 3-year period ending with the close of its taxable year immediately preceding the year during which the sale or exchange occurred,

unless such gain is subject to an income, war profits, or excess profits tax of a foreign country or possession of the United States, and the rate of tax applicable to such gain is 10 percent or more of the gain from the sale or exchange (computed under this chapter).''

Subsec. (b)(3)(D). Pub. L. 99–514, §1211(b)(3), redesignated subpar. (F) as (D) and struck out former subpar. (D), gain from liquidation of certain foreign corporations, which read as follows: ''Subparagraph (C) shall not apply with respect to a distribution in liquidation of a foreign corporation to which part II of subchapter C applies if such corporation derived less than 50 percent of its gross income from sources within the United States for the 3-year period ending with the close of such corporation's taxable year immediately preceding the year during which the distribution occurred.''

Subsec. (b)(3)(E), (F). Pub. L. 99–514, §1211(b)(3), redesignated former subpars. (E) and (F) as (C) and (D), respectively.

Subsec. (d). Pub. L. 99–514, §1201(d)(1), substituted ''certain categories of income'' for ''certain interest income and income from DISC, former DISC, FSC, or former FSC'' in heading.

Subsec. (d)(1). Pub. L. 99–514, §1201(a), (d)(2), (3), inserted ''and sections 902, 907, and 960'' in introductory provisions, added subpars. (A) to (E), struck out former subpar. (A) which read ''the interest income described in paragraph (2)'', redesignated former subpars. (B), (C), (D), and (E) as (F), (G), (H), and (I), respectively, and in subpar. (I), substituted ''in any of the preceding subparagraphs'' for ''in subparagraph (A), (B), (C), or (D)''.

Pub. L. 99–514, §1899A(24), made technical correction clarifying heading. See 1984 Amendment note below.

Subsec. (d)(1)(D). Pub. L. 99–514, §1876(d)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''distributions from a FSC (or former FSC) out of earnings and profits attributable to foreign trade income (within the meaning of section 923(b)), and''.

Subsec. (d)(2). Pub. L. 99–514, §1201(b), added par. (2) and struck out former par. (2), interest income to which applicable, which read as follows: ''For purposes of this subsection, the interest income described in this paragraph is interest other than interest—

''(A) derived from any transaction which is directly related to the active conduct by the taxpayer of a trade or business in a foreign country or a possession of the United States,

''(B) derived in the conduct by the taxpayer of a banking, financing, or similar business,

''(C) received from a corporation in which the taxpayer (or one or more includible corporations in an affiliated group, as defined in section 1504, of which the taxpayer is a member) owns, directly or indirectly, at least 10 percent of the voting stock, or

''(D) received on obligations acquired as a result of the disposition of a trade or business actively con-

ducted by the taxpayer in a foreign country or possession of the United States or as a result of the disposition of stock or obligations of a corporation in which the taxpayer owned at least 10 percent of the voting stock.

For purposes of subparagraph (C), stock owned, directly or indirectly, by or for a foreign corporation, shall be considered as being proportionately owned by its shareholders. For purposes of this subsection, interest (after the operation of section 904(d)(3)) received from a designated payor corporation described in section 904(d)(3)(E)(iii) by a taxpayer which owns directly or indirectly less than 10 percent of the voting stock of such designated payor corporation shall be treated as interest described in subparagraph (A) to the extent such interest would have been so treated had such taxpayer received it from other than a designated payor corporation.''

Pub. L. 99–514, § 1810(b)(3), inserted at end ''For purposes of this subsection, interest (after the operation of section 904(d)(3)) received from a designated payor corporation described in section 904(d)(3)(E)(iii) by a taxpayer which owns directly or indirectly less than 10 percent of the voting stock of such designated payor corporation shall be treated as interest described in subparagraph (A) to the extent such interest would have been so treated had such taxpayer received it from other than a designated payor corporation.''

Subsec. (d)(3). Pub. L. 99–514, § 1201(b), added par. (3) and struck out former par. (3) treating as interest certain amounts attributable to United States-owned foreign corporations, etc., subpars. thereof relating to following subject matter: (A) general provisions, (B) separate limitation interest, (C) exception where designated corporation has small amount of separate limitation interest, (D) treatment of certain interest, (E) designated payor corporation, (F) determination of year to which amount is attributable, (G) ordering rules, (H) dividend, (I) interest and dividends from members of same affiliated group, and (J) distributions through other entities.

Subsec. (d)(3)(C). Pub. L. 99–514, § 1810(b)(1), inserted at end ''The preceding sentence shall not apply to any amount includible in gross income under section 551 or 951.''

Subsec. (d)(3)(E). Pub. L. 99–514, § 1810(b)(4)(A), inserted at end:

''(iv) any other corporation formed or availed of for purposes of avoiding the provisions of this paragraph.

For purposes of this paragraph, the rules of paragraph (9) of subsection (g) shall apply.''

Subsec. (d)(3)(I). Pub. L. 99–514, § 1810(b)(2), redesignated subpar. (I) as (J) and added a new subpar. (I), interest and dividends from members of same affiliated group, which read as follows: ''For purposes of this paragraph, dividends and interest received or accrued by the designated payor corporation from another member of the same affiliated group (determined under section 1504 without regard to subsection (b)(3) thereof) shall be treated as separate limitation interest if (and only if) such amounts are attributable (directly or indirectly) to separate limitation interest of any other member of such group.''

Subsec. (d)(3)(J). Pub. L. 99–514, § 1810(b)(2), redesignated subpar. (I) as (J) and struck out former subpar. (J), interest from members of same affiliated group, which read as follows: ''For purposes of this paragraph, interest received or accrued by the designated payor corporation from another member of the same affiliated group (determined under section 1504 without regard to subsection (b)(3) thereof) shall not be treated as separate limitation interest, unless such interest is attributable directly or indirectly to separate limitation interest of such other member.''

Subsec. (d)(4), (5). Pub. L. 99–514, § 1201(b), added pars. (4) and (5).

Subsec. (f)(5). Pub. L. 99–514, § 1203(a), added par. (5).

Subsec. (g)(1)(A)(iii). Pub. L. 99–514, § 1235(f)(4)(A), added cl. (iii).

Subsec. (g)(2). Pub. L. 99–514, § 1235(f)(4)(B), substituted ''holding or passive foreign investment company'' for ''holding company'' in heading.

Subsec. (g)(9), (10). Pub. L. 99–514, § 1810(a)(1)(A), added par. (9) and redesignated former par. (9) as (10).

Subsec. (i)(2). Pub. L. 99–514, § 701(e)(4)(H), struck out ''by an individual'' after ''can be taken'' and substituted ''section 59(a)'' for ''section 55(c)''.

1984—Subsec. (d). Pub. L. 98–369, § 801(d)(2)(C), which directed amendment of par. (1) heading by substituting ''Separate application of section with respect to certain interest income and income from DISC, former DISC, FSC, or former FSC'' for ''Application of section in case of certain interest income and dividends from a DISC or former DISC'' was executed to subsec. (d) heading to reflect the probable intent of Congress.

Subsec. (d)(1)(B) to (E). Pub. L. 98–369, § 801(d)(2)(A), (B), struck out ''and'' after ''United States,'' at end of subpar. (B), substituted ''taxable income attributable to foreign trade income (within the meaning of section 923(b)),'' for ''income other than the interest income described in paragraph (2) and dividends described in subparagraph (B),'' in subpar. (C), and added subpars. (D) and (E).

Subsec. (d)(3). Pub. L. 98–369, § 122(a), added par. (3).

Subsec. (g). Pub. L. 98–369, § 121(a), added subsec. (g). Former subsec. (g) redesignated (h).

Pub. L. 98–369, § 474(r)(21), amended subsec. (g) generally, substituting ''Coordination with nonrefundable personal credits'' for ''Coordination with credit for the elderly'' in heading and in text substituting ''reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter'' for ''reduced by the amount of the credit (if any) for the taxable year allowable under section 37 (relating to credit for the elderly and the permanently and totally disabled)''.

Subsecs. (h), (i). Pub. L. 98–369, § 121(a), redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

1983—Subsec. (g). Pub. L. 98–21 substituted ''relating to credit for the elderly and the permanently and totally disabled'' for ''relating to credit for the elderly''.

1982—Subsec. (f)(4) to (6). Pub. L. 97–248 struck out par. (4) which provided for the determination of foreign oil related loss where section 907 was applicable, redesignated par. (5) as (4), and purported to redesignate par. (6) as (5). However, subsec. (f) did not contain a par. (6).

1980—Subsec. (b)(3)(F). Pub. L. 96–222, § 104(a)(3)(D)(i), redesignated subpar. (E) ''Rate differential portion'', added by Pub. L. 95–600, as (F).

1978—Subsec. (b)(2). Pub. L. 95–600, §§ 403(c)(4)(A), 701(u)(2)(A), (3)(A), in subpar. (A) substituted ''this section'' for ''subsection (a)'', ''the rate differential portion'' for ''three eighths'' wherever appearing, and ''for purposes of determining taxable income from sources without the United States, any net capital loss (and any amount which is a short term capital loss under section 1212(a))'' for ''any net capital loss''.

Subsec. (b)(3). Pub. L. 95–600, §§ 403(c)(4)(B), 701(u)(2)(B), (C), as amended by Pub. L. 96–222, § 104(a)(3)(D)(ii), substituted ''There'' for ''For purposes of this paragraph, there'', added subpar. (D), redesignated former subpar. (D), relating to section 1231 gains, as subpar. (E), and added another subpar. (E), relating to rate differential portion. See 1980 Amendment note above.

Subsec. (f)(2)(A). Pub. L. 95–600, § 701(u)(4)(A), struck out provision relating to capital loss carrybacks and carryovers.

Subsec. (f)(4). Pub. L. 95–600, § 701(u)(4)(B), (8)(C), substituted in introductory provisions ''In making the separate computation under this subsection with respect to foreign oil related income which is required by section 907(b)'' for ''In the case of a corporation to which section 907(b)(1) applies'' and in subpar. (A) struck out provision relating to capital loss carrybacks and carryovers.

Subsec. (f)(5). Pub. L. 95–600, § 701(q)(2), added par. (5).

Subsec. (h). Pub. L. 95–600, § 421(e)(6), designated existing provisions as par. (1) and added par. (2).

1977—Subsec. (a). Pub. L. 95–30 provided that, for purposes of determining the maximum total amount of the credit taken under section 901(a), in the case of an individual, the entire taxable income shall be reduced by an amount equal to the zero bracket amount.

1976—Subsec. (a). Pub. L. 94–455, §1031(a), struck out provisions allowing the per-country limitation, made the overall limitation applicable to all taxpayers to determine their foreign tax credit limitation, and inserted reference to section 901(a).

Subsec. (b). Pub. L. 94–455, §§1031(a), 1034(a), 1051(e), redesignated subsec. (c) as (b)(1), inserted provisions that the net United States capital losses would offset net foreign capital gains and, in the case of corporations, that only 30/48 of the net foreign source gain would be included in the foreign tax credit limitation, and that the gain from the sale or exchange of personal property outside the United States would be considered United States source income unless one of three exceptions applied, and added par. (4).

Subsec. (c). Pub. L. 94–455, §1031(a), redesignated subsec. (d) as (c), and amended the redesignated subsec. (c) generally to conform to the elimination of the per-country limitation in subsec. (a). Former subsec. (c) redesignated (b)(1).

Subsec. (d). Pub. L. 94–455, §1031(a), redesignated subsec. (f)(1), (2), as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 94–455, §1031(a), added subsec. (e). Former subsec. (e) was eliminated in view of the amendment of subsec. (a).

Subsec. (f). Pub. L. 94–455, §§1031(a), 1032(a), 1901(b)(10)(B), added subsec. (f), and substituted ''section 172(h)'' for ''section 172(k)(1)'' in pars. (2)(B)(i) and (4)(B)(i). Former subsec. (f)(1), (2), was redesignated (d). Former subsecs. (f)(3), (4), (5) were omitted.

Subsec. (g). Pub. L. 94–455, §§1032(a), 503(b)(1), added subsec. (g). Former subsec. (f) redesignated (g), and further redesignated (h).

Subsec. (h). Pub. L. 94–455, §503(b)(1), redesignated former subsec. (g) as (h).

1971—Subsec. (f). Pub. L. 92–178, §502(b)(2), inserted ''and dividends from a DISC or former DISC'' after ''interest income'' in the heading.

Subsec. (f)(1). Pub. L. 92–178, §502(b)(2), inserted ''each of the following items of income'' in introductory text, added subpar. (B), and redesignated former subpar. (B) as (C), inserting therein provisions respecting dividends described in subparagraph (B).

Subsec. (f)(3). Pub. L. 92–178, §502(b)(3), provided that the limitation provided by subsec. (a)(2) shall not apply to dividends described in paragraph (1)(B) and substituted ''limitation provided by subsection (a)(2) applies with respect to income described in paragraph (1)(B) and (C)'' for ''limitation provided by subsection (a)(2) applies with respect to income other than the interest income described in paragraph (2)''.

Subsec. (f)(5). Pub. L. 92–178, §502(b)(4), added par. (5).

1969—Subsec. (b)(1). Pub. L. 91–172, §506(b)(1), substituted ''(A) with the consent of the Secretary or his delegate with respect to any taxable year or (B) for the taxpayer's first taxable year beginning after December 31, 1969'' for ''with the consent of the Secretary or his delegate with respect to any taxable year''.

Subsec. (b)(2). Pub. L. 91–172, §506(b)(2), substituted ''Except in a case to which paragraph (1)(B) applies, if the taxpayer'' for ''If a taxpayer''.

1966—Subsec. (f)(2). Pub. L. 89–809 inserted reference to includible corporations in an affiliated group, as defined in section 1504, of which the taxpayer is a member and inserted reference to both direct and indirect ownership in subpar. (C) and inserted provision that, for purposes of subpar. (C), stock owned directly or indirectly by or for a foreign corporation shall be considered as being proportionately owned by its shareholders.

1964—Subsec. (g)(2). Pub. L. 88–272 substituted ''section 1503(b)'' for ''section 1503(d)''.

1962—Subsec. (f). Pub. L. 87–834, §10(a), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 87–834, §§10(a), 12(b)(2), redesignated former subsec. (f) as (g), designated existing provisions as par. (2), and added par. (1).

1960—Subsec. (a). Pub. L. 86–780, §1(a), designated existing provisions as par. (1), inserted introductory clause ''In the case of any taxpayer who elects the limitation provided by this paragraph'' and inserted ''foreign'', ''or possession of the United States'' and ''or possession'' therein and added par. (2).

Subsec. (b). Pub. L. 86–780, §1(a), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 86–780, §1(b), redesignated former subsec. (b) as (c) and inserted ''applicable'' before ''limitation'' therein. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 86–780, §1(c), redesignated former subsec. (c) as (d) and inserted ''applicable'' before ''limitation'' in two places.

Subsecs. (e), (f). Pub. L. 86–780, §1(d), added subsecs. (e) and (f).

1958—Subsec. (c). Pub. L. 85–866 added subsec. (c).

EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Pub. L. 111–226, title II, §213(b), Aug. 10, 2010, 124 Stat. 2399, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 10, 2010].''

Amendment by section 217(c)(2) of Pub. L. 111–226 applicable to taxable years beginning after Dec. 31, 2010, with certain exceptions, see section 217(d) of Pub. L. 111–226, set out as an Effective Date of 2010 Amendment note under section 861 of this title.

Amendment by Pub. L. 111–148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111–148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111–148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111–148, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1004(b)(5) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1004(d) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1142(b)(1)(E) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(1)(E) of Pub. L. 111–5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §11(f)(4), Dec. 29, 2007, 121 Stat. 2489, provided that: ''The amendments made by this subsection [amending this section and sections 1298 and 9502 of this title] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108–357] to which they relate.''

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by section 402(i)(3)(G) of Pub. L. 109–135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, §901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109–135, set out as a note under section 36C of this title.

Amendment by section 402(i)(3)(G) of Pub. L. 109–135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109–58, to which it relates and applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109–135, set out as a note under section 36C of this title.

Amendments by section 403(k), (*o*) of Pub. L. 109–135 effective as if included in the provisions of the Amer-

ican Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENTS

Amendment by section 402(a) of Pub. L. 108–357 applicable to losses for taxable years beginning after Dec. 31, 2006, see section 402(c) of Pub. L. 108–357, set out as a note under section 535 of this title.

Amendment by section 403(a), (b)(1)–(5) of Pub. L. 108–357 applicable to taxable years beginning after Dec. 31, 2002, see section 403(c) of Pub. L. 108–357, set out as a note under section 864 of this title.

Amendment by section 403(a), (b)(1)–(5) of Pub. L. 108–357 not applicable to taxable years beginning after Dec. 31, 2002, and before Jan. 1, 2005, with a specific provision for application of subsec. (d)(4)(C)(iv) of this section, if taxpayer so elects, see section 403(d) of Pub. L. 108–357, set out as a note under section 864 of this title.

Pub. L. 108–357, title IV, § 404(g), Oct. 22, 2004, 118 Stat. 1497, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.

''(2) TRANSITIONAL RULE RELATING TO INCOME TAX BASE DIFFERENCE.—Section 904(d)(2)(H)(ii) of the Internal Revenue Code of 1986, as added by subsection (e), shall apply to taxable years beginning after December 31, 2004.''

Amendment by section 413(c)(14), (15) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–357, title IV, § 417(c), Oct. 22, 2004, 118 Stat. 1512, provided that:

''(1) CARRYBACK.—The amendments made by subsections (a)(1) and (b)(1) [amending this section and section 907 of this title] shall apply to excess foreign taxes arising in taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].

''(2) CARRYOVER.—The amendments made by subsections (a)(2) and (b)(2) [amending this section and section 907 of this title] shall apply to excess foreign taxes which (without regard to the amendments made by this section [amending this section and section 907 of this title]) may be carried to any taxable year ending after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title VIII, § 895(b), Oct. 22, 2004, 118 Stat. 1648, provided that: ''The amendment made by this section [amending this section] shall apply to dispositions after the date of the enactment of this Act [Oct. 22, 2004].''

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2003, see section 312(c) of Pub. L. 108–311, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 601(b)(1) of Pub. L. 107–147 applicable to taxable years beginning after Dec. 31, 2001, see section 601(c) of Pub. L. 107–147, set out as a note under section 26 of this title.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by sections 201(b), 202(f), and 618(b) of Pub. L. 107–16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108–311, set out as a note under section 36C of this title.

Amendment by sections 201(b), 202(f), and 618(b) of Pub. L. 107–16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107–147, set out as a note under section 36C of this title.

Amendment by section 201(b)(2)(G) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 201(e)(2) of Pub. L. 107–16, set out as a note under section 24 of this title.

Amendment by section 202(f)(2)(C) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107–16, set out as a note under section 36C of this title.

Amendment by section 618(b)(2)(D) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 618(d) of Pub. L. 107–16, set out as a note under section 24 of this title.

Amendment by sections 201(b)(2)(G) and 202(f)(2)(C) of Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2012, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to taxable years beginning after Dec. 31, 1998, see section 501(c) of Pub. L. 106–170, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 311(c)(3) of Pub. L. 105–34 applicable to taxable years ending after May 6, 1997, see section 311(d) of Pub. L. 105–34, set out as a note under section 1 of this title.

Section 1101(b) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Section 1105(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002.''

Section 1111(c)(2) of Pub. L. 105–34 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 1163(b) of Pub. L. 105–34 effective Aug. 5, 1997, see section 1163(c) of Pub. L. 105–34, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1501(d) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and sections 951, 956, 959, 989, and 1297 of this title and repealing section 956A of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end.''

Amendment by section 1703(i)(1) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13227(d) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1993, see section 13227(f) of Pub. L. 103–66 set out as a note under section 56 of this title.

Section 13235(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 907 and 954 of this title] shall apply to taxable years beginning after December 31, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(5) of Pub. L. 101–508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101–508, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7402(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply to taxable years beginning after July 10, 1989.''

Amendment by section 7811(i)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(bb)(4)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the amendment made by section 121 of the Tax Reform Act of 1984 [Pub. L. 98–369].''

Amendment by sections 1003(b)(2) and 1012(a)(1)(A), (2)–(4), (6)–(11), (c), (p)(11), (29), (q)(12) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 2004(*l*) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100–203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100–647, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(13) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Amendment by section 701(e)(4)(H) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Section 1201(e) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1012(a)(5), Nov. 10, 1988, 102 Stat. 3495; Pub. L. 101–239, title VII, §7404(a), Dec. 19, 1989, 103 Stat. 2361, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 864 and 954 of this title] shall apply to taxable years beginning after December 31, 1986.

''[(2) Repealed. Pub. L. 101–239, title VII, §7404(a), Dec. 19, 1989, 103 Stat. 2361.]

''(3) SPECIAL RULE FOR TAXPAYER WITH OVERALL FOREIGN LOSS.—

''(A) IN GENERAL.—If a taxpayer incorporated on June 20, 1928, the principal headquarters of which is in Minneapolis, Minnesota, sustained an overall foreign loss (as defined in section 904(f)(2) of the Internal Revenue Code of 1954 [now 1986]) in taxable years beginning before January 1, 1986, in connection with 2 separate trades or businesses which the taxpayer had, during 1985, substantially disposed of in tax-free transactions pursuant to section 355 of such Code, then an amount, not to exceed $40,000,000 of foreign source income, which, but for this paragraph, would not be treated as overall limitation income, shall be so treated.

''(B) SUBSTANTIAL DISPOSITION.—For purposes of this paragraph, a taxpayer shall be treated as having substantially disposed of a trade or business if the retained portion of such business had sales of less than 10 percent of the annual sales of such business for taxable years ending in 1985.''

[Section 7404(b), (c) of Pub. L. 101–239 provided that:

[''(b) EFFECTIVE DATE.—The repeal made by subsection (a) [amending section 1201(e) of Pub. L. 99–514, set out above] shall apply to taxable years beginning after December 31, 1989.

[''(c) EXCEPTION FOR CERTAIN TAXPAYERS WITH SUBSTANTIAL LOAN LOSS RESERVES.—

[''(1) IN GENERAL.—The repeal made by subsection (a) shall not apply to any taxpayer if, on any financial statement filed by such taxpayer for regulatory purposes with respect to any quarter ending during the period beginning on March 31, 1989, and ending on December 31, 1989, such taxpayer showed loss reserves against its qualified loans equal to at least 25 percent of the amount of such loans.

[''(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

[''(A) QUALIFIED LOAN.—The term 'qualified loan' has the meaning given such term by section 1201(e)(2)(H) of the Tax Reform Act of 1986 [Pub. L. 99–514, formerly set out above] (as in effect before its repeal by subsection (a)).

[''(B) PARENT-SUBSIDIARY CONTROLLED GROUPS.—In the case of any taxpayer which is a member of a parent-subsidiary controlled group (as defined in section 585(c)(5)(A) [26 U.S.C. 585(c)(5)(A)]), this subsection shall be applied by treating all members of such group as 1 taxpayer.'']

Section 1203(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to losses incurred in taxable years beginning after December 31, 1986.''

Amendment by section 1211(b)(3) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Amendment by section 1235(f)(4) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as an Effective Date note under section 1291 of this title.

Section 1810(a)(1)(B) of Pub. L. 99–514 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect on March 28, 1985. In the case of any taxable year ending after such date of any corporation treated as a United States-owned foreign corporation by reason of the amendment made by subparagraph (A)—

''(i) only income received or accrued by such corporation after such date shall be taken into account under section 904(g) of the Internal Revenue Code of 1954 [now 1986]; except that

''(ii) paragraph (5) of such section 904(g) shall be applied by taking into account all income received or accrued by such corporation during such taxable year.''

Section 1810(b)(4)(B) of Pub. L. 99–514 provided that:

''(i) The amendment made by subparagraph (A) [amending this section] insofar as it adds the last sentence to subparagraph (E) of section 905(d)(3) [904(d)(3)] shall take effect on March 28, 1985. In the case of any taxable year ending after such date of any corporation treated as a designated payor corporation by reason of the amendment made by subparagraph (A)—

''(I) only income received or accrued by such corporation after such date shall be taken into account under section 904(d)(3) of the Internal Revenue Code of 1954 [now 1986]; except that

''(II) subparagraph (C) of such section 904(d)(3) shall be applied by taking into account all income received or accrued by such corporation during such taxable year.

''(ii) The amendment made by subparagraph (A) insofar as it adds clause (iv) to subparagraph (E) of section 904(d)(3) shall take effect on December 31, 1985. For purposes of such amendment, the rule of the second sentence of clause (i) shall be applied by taking into account December 31, 1985, in lieu of March 28, 1985.''

Amendment by sections 1810(b)(1)–(3) and 1876(d)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 121(b) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XVIII, §1810(a)(2), (3), Oct. 22, 1986, 100 Stat. 2095, 2822, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984]. In the case of any taxable year of any United States-owned foreign corporation ending after the date of the enactment of this Act—

''(A) only income received or accrued by such foreign corporation after such date of enactment shall be taken into account under section 904(g) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)); except that

''(B) paragraph (5) of such section 904(g) (relating to exception where small amount of United States source income) shall be applied by taking into account all income received or accrued by such foreign corporation during such taxable year.

''(2) SPECIAL RULE FOR APPLICABLE CFC.—

''(A) IN GENERAL.—In the case of qualified interest received or accrued by an applicable CFC before January 1, 1992—

''(i) such interest shall not be taken into account under section 904(g) of the Internal Revenue Code of 1986 (as added by subsection (a)), except that

''(ii) such interest shall be taken into account for purposes of applying paragraph (5) of such section 904(g) (relating to exception where small amount of United States source income).

''(B) QUALIFIED INTEREST.—For purposes of subparagraph (A), the term 'qualified interest' means—

''(i) the aggregate amount of interest received or accrued during any taxable year by an applicable CFC on United States affiliate obligations held by such applicable CFC, multiplied by,

''(ii) a fraction (not in excess of 1)—

''(I) the numerator of which is the sum of the aggregate principal amount of United States affiliate obligations held by the applicable CFC on March 31, 1984, but not in excess of the applicable limit, and

''(II) the denominator of which is the average daily principal amount of United States affiliate obligations held by such applicable CFC during the taxable year.

Proper adjustments shall be made to the numerator described in clause (ii)(I) for original issue discount accruing after March 31, 1984, on CFC obligations and United States affiliate obligations.

''(C) ADJUSTMENT FOR RETIREMENT OF CFC OBLIGATIONS.—The amount described in subparagraph (B)(ii)(I) for any taxable year shall be reduced by the sum of—

''(i) the excess of (I) the aggregate principal amount of CFC obligations which are outstanding on March 31, 1984, but only with respect to obligations issued before March 8, 1984, or issued after March 7, 1984, by the applicable CFC pursuant to a binding commitment in effect on March 7, 1984, over (II) the average daily outstanding principal amount during the taxable year of the CFC obligations described in subclause (I), and

''(ii) the portion of the equity of such applicable CFC allocable to the excess described in clause (i) (determined on the basis of the debt-equity ratio of such applicable CFC on March 31, 1984).

''(D) APPLICABLE CFC.—For purposes of this paragraph, the term 'applicable CFC' means any controlled foreign corporation (within the meaning of section 957)—

''(i) which was in existence on March 31, 1984, and

''(ii) the principal purpose of which on such date consisted of the issuing of CFC obligations (or short-term borrowing from nonaffiliated persons) and lending the proceeds of such obligations (or such borrowing) to affiliates.

''(E) AFFILIATES; UNITED STATES AFFILIATES.—For purposes of this paragraph—

''(i) AFFILIATE.—The term 'affiliate' means any person who is a related person (within the meaning of section 482 of the Internal Revenue Code of 1986) to the applicable CFC.

''(ii) UNITED STATES AFFILIATE.—The term 'United States affiliate' means any United States person which is an affiliate of the applicable CFC.

''(iii) TREATMENT OF CERTAIN FOREIGN CORPORATIONS ENGAGED IN BUSINESS IN UNITED STATES.—For purposes of clause (ii), a foreign corporation shall be treated as a United States person with respect to any interest payment made by such corporation if—

''(I) at least 50 percent of the gross income from all sources of such corporation for the 3-year period ending with the close of its last taxable year ending on or before March 31, 1984, was effectively connected with the conduct of a trade or business within the United States, and

''(II) at least 50 percent of the gross income from all sources of such corporation for the 3-year period ending with the close of its taxable year preceding the payment of such interest was effectively connected with the conduct of a trade or business within the United States.

''(F) UNITED STATES AFFILIATE OBLIGATIONS.—For purposes of this paragraph, the term 'United States affiliate obligations' means any obligation of (and payable by) a United States affiliate.

''(G) CFC OBLIGATION.—For purposes of this paragraph, the term 'CFC obligation' means any obligation of (and issued by) a CFC if—

''(i) the requirements of clause (i) of [former] section 163(f)(2)(B) of the Internal Revenue Code of 1986 are met with respect to such obligation, and

''(ii) in the case of an obligation issued after December 31, 1982, the requirements of clause (ii) of such [former] section 163(f)(2)(B) are met with respect to such obligation.

''(H) TREATMENT OF OBLIGATIONS WITH ORIGINAL ISSUE DISCOUNT.—For purposes of this paragraph, in the case of any obligation with original issue discount, the principal amount of such obligation as of any day shall be treated as equal to the revised issue price as of such day (as defined in section 1278(a)(4) of the Internal Revenue Code of 1986).

''(I) APPLICABLE LIMIT.—For purposes of subparagraph (B)(ii)(I), the term 'applicable limit' means the sum of—

''(i) the equity of the applicable CFC on March 31, 1984, and

''(ii) the aggregate principal amount of CFC obligations outstanding on March 31, 1984, which were issued by an applicable CFC—

''(I) before March 8, 1984, or

''(II) after March 7, 1984, pursuant to a binding commitment in effect on March 7, 1984.

''(3) EXCEPTION FOR CERTAIN TERM OBLIGATIONS.—The amendments made by subsection (a) shall not apply to interest on any term obligations held by a foreign corporation on March 7, 1984. The preceding sentence shall not apply to any United States affiliate obligation (as defined in paragraph (2)(F)) held by an applicable CFC (as defined in paragraph (2)(D)).

''(4) DEFINITIONS.—Any term used in this subsection which is also used in section 904(g) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall have the meaning given such term by such section 904(g).

''(5) SEPARATE APPLICATION OF SECTION 904 IN CASE OF INCOME COVERED BY TRANSITIONAL RULES.—Subsections (a), (b), and (c) of section 904 of the Internal Revenue Code of 1986 shall be applied separately to any amount not treated as income derived from sources within the United States but which (but for the provisions of paragraph (2) or (3) of this subsection) would be so treated under the amendments made by subsection (a). Any such separate application shall be made before any separate application required under section 904(d) of such Code.

''(6) APPLICATION OF PARAGRAPH (5) DELAYED IN CERTAIN CASES.—In the case of a foreign corporation—

''(A) which is a subsidiary of a domestic corporation which has been engaged in manufacturing for more than 50 years, and

''(B) which issued certificates with respect to obligations on—

''(i) September 24, 1979, denominated in French francs,

''(ii) September 10, 1981, denominated in Swiss francs,

''(iii) July 14, 1982, denominated in Swiss francs, and

''(iv) December 1, 1982, denominated in United States dollars,

with a total principal amount of less than 200,000,000 United States dollars.[,]

then paragraph (5) shall not apply to the proceeds from relending such obligations or related capital before January 1, 1986.''

Section 122(b) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984].

''(2) SPECIAL RULES FOR INTEREST INCOME.—

''(A) IN GENERAL.—Interest income received or accrued by a designated payor corporation shall be taken into account for purposes of the amendment made by subsection (a) only in taxable years beginning after the date of the enactment of this Act.

''(B) EXCEPTION FOR INVESTMENT AFTER JUNE 22, 1984.—Notwithstanding subparagraph (A), the amendment made by subsection (a) shall apply to interest income received or accrued by a designated payor corporation after the date of enactment of this Act if it is attributable to investment in the designated payor corporation after June 22, 1984.

''(3) TERM OBLIGATIONS OF DESIGNATED PAYOR CORPORATION WHICH IS NOT APPLICABLE CFC.—In the case of any designated payor corporation which is not an applicable CFC (as defined in section 121(b)(2)(D) [section 121(b)(2)(D) of Pub. L. 98–369, set out above]), any interest received or accrued by such corporation on a term obligation held by such corporation on March 7, 1984, shall not be taken into account.''

Amendment by section 474(r)(21) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 801(d)(2) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, except that former subsec. (f)(4), which had provided for the determination of foreign oil related loss where section 907 of this title was applicable, shall continue to apply in certain instances where the taxpayer has had a foreign loss from an activity not related to oil and gas, see section 211(e) of Pub. L. 97–248, set out as a note under section 907 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 403(c)(4) of Pub. L. 95–600 effective on Nov. 6, 1978, see section 403(d)(3) of Pub. L. 95–600, set out as a note under section 528 of this title.

Amendment by section 421(e)(6) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as note under section 5 of this title.

Amendment by section 701(a)(8)(C) of Pub. L. 95–600 applicable, in the case of individuals, to taxable years ending after Dec. 31, 1974, and, in the case of corporations, to taxable years ending after Dec. 31, 1976, see section 701(u)(8)(D) of Pub. L. 95–600, set out as a note under section 907 of this title.

Section 701(q)(3)(B) of Pub. L. 95–600, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by paragraph (2) [amending this section] shall take effect as if included in section 904(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as such provision was added to such Code by section 1032(a) of the Tax Reform Act of 1976 [section 1032(a) of Pub. L. 94–455].''

Section 701(u)(2)(D) of Pub. L. 95–600 provided that: ''The amendments made by this paragraph [amending this section] shall apply to taxable years beginning after December 31, 1975.''

Section 701(u)(3)(B) of Pub. L. 95–600 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1975.''

Section 701(u)(4)(C) of Pub. L. 95–600 provided that: ''The amendments made by this paragraph [amending this section] shall apply—

''(i) to overall foreign losses sustained in taxable years beginning after December 31, 1975, and

''(ii) to foreign oil related losses sustained in taxable years ending after December 31, 1975.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 503(b)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94–455, set out as a note under section 3 of this title.

Section 1031(c) of Pub. L. 94–455, as amended by Pub. L. 95–600, title VII, §701(u)(6), (7)(B)(ii), Nov. 6, 1978, 92 Stat. 2914, 2916; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 243, 383, 901, 907, 960, 1351, 1503, 6038, and 6501 of this title] shall apply to taxable years beginning after December 31, 1975.

''(2) EXCEPTION FOR CERTAIN MINING OPERATIONS.—In the case of a domestic corporation or includible corporation in an affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) which has as of October 1, 1975—

''(A) been engaged in the active conduct of the trade or business of the extraction of minerals (of a character with respect to which a deduction for depletion is allowable under section 613 of such Code) outside the United States or its possessions for less than 5 years preceding the date of enactment of this Act [Oct. 4, 1976],

''(B) had deductions properly apportioned or allocated to its gross income from such trade or business in excess of such gross income in at least 2 taxable years,

''(C) 80 percent of its gross receipts are from the sale of such minerals, and

''(D) made commitments for substantial expansion of such mineral extraction activities,

the amendments made by this section [amending this section and sections 243, 383, 901, 907, 960, 1351, 1503, 6038, and 6501 of this title] shall apply to taxable years beginning after December 31, 1978. In the case of a loss sustained in a taxable year beginning before January 1,

1979, by any corporation to which this paragraph applies, if section 904(a)(1) of such Code (as in effect before the enactment of this Act [Oct. 4, 1976]) applies with respect to such taxable year, the provisions of section 904(f) of such Code shall be applied with respect to such loss under the principles of such section 904(a)(1).

''(3) EXCEPTION FOR INCOME FROM POSSESSIONS.—In the case of gross income from sources within a possession of the United States (and the deductions properly apportioned or allocated thereto), the amendments made by this section [amending this section and sections 243, 383, 901, 907, 960, 1351, 1503, 6038, and 6501 of this title] shall apply to taxable years beginning after December 31, 1978.

''(4) CARRYBACKS AND CARRYOVERS IN THE CASE OF MINING OPERATIONS AND INCOME FROM A POSSESSION.—In the case of a taxpayer to whom paragraph (2) or (3) of this subsection applies, section 904(e) of such Code [section 904(e) of this title] shall apply except that 'January 1, 1979' shall be substituted for 'January 1, 1976' each place it appears therein. If such a taxpayer elects the overall limitation for a taxable year beginning before January 1, 1979, such section 904(e) shall be applied by substituting 'the January 1, of the last year for which such taxpayer is on the per-country limitation' for 'January 1, 1976' each place it appears therein.''

Section 1032(c) of Pub. L. 94–455, as amended by Pub. L. 95–600, title VII, § 701(u)(5), (7)(A), (B)(i), Nov. 6, 1978, 92 Stat. 2914; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2), (3), and (5), the amendment made by subsection (a) [amending this section] shall apply to losses sustained in taxable years beginning after December 31, 1975. The amendment made by subsection (b)(1) [amending section 907 of this title] shall apply to taxable years beginning after December 31, 1975. The amendment made by subsection (b)(2) [amending section 907 of this title] shall apply to losses sustained in taxable years ending after December 31, 1975.

''(2) OBLIGATIONS OF FOREIGN GOVERNMENTS.—The amendments made by subsection (a) [amending this section] shall not apply to losses on the sale, exchange, or other disposition of bonds, notes, or other evidences of indebtedness issued before May 14, 1976, by a foreign government or instrumentality thereof for the acquisition of property located in that country or stock of a corporation (created or organized in or under the laws of that foreign country) or indebtedness of such corporation.

''(3) SUBSTANTIAL WORTHLESSNESS BEFORE ENACTMENT.—The amendments made by subsection (a) [amending this section] shall not apply to losses incurred on the loss from stock or indebtedness of a corporation in which the taxpayer owned at least 10 percent of the voting stock and which has sustained losses in 3 out of the last 5 taxable years beginning before January 1, 1976, which has sustained an overall loss for those 5 years, and with respect to which the taxpayer has terminated or will terminate all operations by reason of sale, liquidation, or other disposition before January 1, 1977, of such corporation or its assets.

''(4) LIMITATION BASED ON DEFICIT IN EARNINGS AND PROFITS.—If paragraph (3) would apply to a taxpayer but for the fact that the loss is sustained after December 31, 1976, and if the loss is sustained in a taxable year beginning before January 1, 1979, the amendments made by subsection (a) [amending this section] shall not apply to such loss to the extent that there was on December 31, 1975, a deficit in earnings and profits in the corporation from which the loss arose. For purposes of the preceding sentence, there shall be taken into account only earnings and profits of the corporation which (A) were accumulated in taxable years of the corporation beginning after December 31, 1962, and during the period in which the stock of such corporation from which the loss arose was held by the taxpayer and (B) are attributable to such stock.

''(5) FOREIGN OIL RELATED LOSSES.—The amendment made by subsection (a) [amending this section] shall apply to foreign oil related losses sustained in taxable years ending after December 31, 1975.

''(6) RECAPTURE OF POSSESSION LOSSES DURING TRANSITIONAL PERIOD WHERE TAXPAYER IS ON A PER-COUNTRY BASIS.—

''(A) APPLICATION OF PARAGRAPH.—This paragraph shall apply if—

''(i) the taxpayer sustained a loss in a possession of the United States in a taxable year beginning after December 31, 1975, and before January 1, 1979,

''(ii) such loss is attributable to a trade or business engaged in by the taxpayer in such possession on January 1, 1976, and

''(iii) the taxpayer chooses to have the benefits of subpart A of part III of subchapter N apply for such taxable year and section 904(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the enactment of this Act [Oct. 4, 1976]) applies with respect to such taxable year.

''(B) NO RECAPTURE DURING TRANSITION PERIOD.—In any case to which this paragraph applies, for purposes of determining the liability for tax of the taxpayer for taxable years beginning before January 1, 1979, section 904(f) of the Internal Revenue Code of 1986 shall not apply with respect to the loss described in subparagraph (A)(i).

''(C) RECAPTURE OF LOSS AFTER THE TRANSITION PERIOD.—In any case to which this paragraph applies—

''(i) for purposes of determining the liability for tax of the taxpayer for taxable years beginning after December 31, 1978, section 904(f) of the Internal Revenue Code of 1986 [subsec. (f) of this section] shall be applied with respect to the loss described in subparagraph (A)(i) under the principles of section 904(a)(1) of such Code (as in effect before the enactment of this Act [Oct. 4, 1976]); but

''(ii) in the case of any taxpayer and any possession, the aggregate amount to which such section 904(f) applies by reason of clause (i) shall not exceed the sum of the net incomes of all affiliated corporations from such possession for taxable years of such affiliated corporations beginning after December 31, 1975, and before January 1, 1979.

''(D) TAXPAYERS NOT ENGAGED IN TRADE OR BUSINESS ON JANUARY 1, 1976.—In any case to which this paragraph applies but for the fact that the taxpayer was not engaged in a trade or business in such possession on January 1, 1976, for purposes of determining the liability for tax of the taxpayer for taxable years beginning before January 1, 1979; if section 904(a)(1) of such Code (as in effect before the enactment of this Act [Oct. 4, 1976]) applies with respect to such taxable year, the provisions of section 904(f) of such Code shall be applied with respect to the loss described in subparagraph (A)(i) under the principles of such section 904(a)(1).

''(E) AFFILIATED CORPORATION DEFINED.—For purposes of subparagraph (C)(ii), the term 'affiliated corporation' means a corporation which, for the taxable year for which the net income is being determined, was not a member of the same affiliated group (within the meaning of section 1504 of the Internal Revenue Code of 1986) as the taxpayer but would have been a member of such group but for the application of subsection (b) of such section 1504.''

Section 1034(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975, except that the provisions of section 904(b)(3)(C) shall only apply to sales or exchanges made after November 12, 1975.''

Amendment by section 1051(e) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with certain exceptions, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(b)(10) of Pub. L. 94–455 applicable with respect to taxable years ending after Oct. 4, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as a note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 506(c) of Pub. L. 91–172, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 106(c)(2) of Pub. L. 89–809 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to interest received after December 31, 1965, in taxable years ending after such date.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88–272, set out as a note under section 1503 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 10(b) of Pub. L. 87–834 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after the date of the enactment of this Act [Oct. 16, 1962], but only with respect to interest resulting from transactions consummated after April 2, 1962.''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 4 of Pub. L. 86–780 provided that: ''The amendments made by the first section [amending this section], section 2 [amending section 1503 of this title], and subsection (a) of section 3 of this Act [amending section 901 of this title] shall apply with respect to taxable years beginning after December 31, 1960. The amendment made by subsection (b) of section 3 of this Act [amending section 901 of this title] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. The amendments made by subsection (c) of section 3 of this Act [enacting section 6501 of this title] shall apply with respect to taxable years beginning after December 31, 1957.''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 42(c) of Pub. L. 85–866 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 6611 of this title] shall apply only with respect to taxable years beginning after December 31, 1957.''

SAVINGS PROVISION

For provisions that nothing in amendment by section 11801(a)(31) of Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendments by sections 701(e)(4)(H) and 1201(a), (b), (d)(1)–(3) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, and for nonapplication of amendment by section 1211(b)(3) of Pub. L. 99–514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2)–(4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

LIMITATION ON CARRYBACK OF FOREIGN TAX CREDITS TO TAXABLE YEARS BEGINNING BEFORE 1987

Section 1205 of Pub. L. 99–514 provided that:

''(a) DETERMINATION OF EXCESS CREDITS.—

''(1) IN GENERAL.—Any taxes paid or accrued in a taxable year beginning after 1986 may be treated under section 904(c) of the Internal Revenue Code of 1954 as paid or accrued in a taxable year beginning before 1987 only to the extent such taxes would be so treated if the tax imposed by chapter 1 of such Code for the taxable year beginning after 1986 were determined by applying section 1 or 11 of such Code (as the case may be) as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986].

''(2) ADJUSTMENTS.—Under regulations prescribed by the Secretary of the Treasury or his delegate proper adjustments shall be made in the application of paragraph (1) to take into account—

''(A) the repeal of the zero bracket amount, and

''(B) the changes in the treatment of capital gains.

''(b) COORDINATION WITH SEPARATE BASKETS.—Any taxes paid or accrued in a taxable year beginning after 1986 which (after the application of subsection (a)) are treated as paid or accrued in a taxable year beginning before 1987 shall be treated as imposed on income described in section 904(d)(1)(E) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]). No taxes paid or accrued in a taxable year beginning after 1986 with respect to high withholding tax interest (as defined in section 904(d)(2)(B) of the Internal Revenue Code of 1986 as amended by this Act) may be treated as paid or accrued in a taxable year beginning before 1987.''

COORDINATION WITH TREATY OBLIGATIONS

Section 1810(a)(4) of Pub. L. 99–514 provided that: ''Section 904(g) of the Internal Revenue Code of 1954 shall apply notwithstanding any treaty obligation of the United States to the contrary (whether entered into on, before, or after the date of the enactment of this Act [Oct. 22, 1986]) unless (in the case of a treaty entered into after the date of the enactment of this Act) such treaty by specific reference to such section 904(g) clearly expresses the intent to override the provisions of such section.''

SEPARATE APPLICATION OF SECTION 904 IN CASE OF INCOME COVERED BY TRANSITIONAL RULES

Section 1810(a)(5) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1018(g)(1), Nov. 10, 1988, 102 Stat. 3582, provided that: ''For purposes of section 121(b)(5) of the Tax Reform Act of 1984 [Pub. L. 98–369, set out above] (relating to separate application of section 904 [of the Internal Revenue Code of 1954 [now 1986]] in case of income covered by transitional rules), any carryover under section 904(c) of the Internal Revenue Code of 1954 [now 1986] allowed to a taxpayer which was incorporated on August 31, 1962, attributable to taxes paid or accrued in taxable years beginning in 1981, 1982, 1983, or 1984, with respect to amounts included in gross income under section 951 of such Code

in respect of a controlled foreign corporation which was incorporated on May 27, 1977, shall be treated as taxes paid or accrued on income separately treated under such section 121(b)(5).''

§ 905. Applicable rules

(a) Year in which credit taken

The credits provided in this subpart may, at the option of the taxpayer and irrespective of the method of accounting employed in keeping his books, be taken in the year in which the taxes of the foreign country or the possession of the United States accrued, subject, however, to the conditions prescribed in subsection (c). If the taxpayer elects to take such credits in the year in which the taxes of the foreign country or the possession of the United States accrued, the credits for all subsequent years shall be taken on the same basis, and no portion of any such taxes shall be allowed as a deduction in the same or any succeeding year.

(b) Proof of credits

The credits provided in this subpart shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary—

(1) the total amount of income derived from sources without the United States, determined as provided in part I,

(2) the amount of income derived from each country, the tax paid or accrued to which is claimed as a credit under this subpart, such amount to be determined under regulations prescribed by the Secretary, and

(3) all other information necessary for the verification and computation of such credits.

(c) Adjustments to accrued taxes

(1) In general

If—

(A) accrued taxes when paid differ from the amounts claimed as credits by the taxpayer,

(B) accrued taxes are not paid before the date 2 years after the close of the taxable year to which such taxes relate, or

(C) any tax paid is refunded in whole or in part,

the taxpayer shall notify the Secretary, who shall redetermine the amount of the tax for the year or years affected. The Secretary may prescribe adjustments to the pools of post-1986 foreign income taxes and the pools of post-1986 undistributed earnings under sections 902 and 960 in lieu of the redetermination under the preceding sentence.

(2) Special rule for taxes not paid within 2 years

(A) In general

Except as provided in subparagraph (B), in making the redetermination under paragraph (1), no credit shall be allowed for accrued taxes not paid before the date referred to in subparagraph (B) of paragraph (1).

(B) Taxes subsequently paid

Any such taxes if subsequently paid—

(i) shall be taken into account—

(I) in the case of taxes deemed paid under section 902 or section 960, for the taxable year in which paid (and no redetermination shall be made under this section by reason of such payment), and

(II) in any other case, for the taxable year to which such taxes relate, and

(ii) shall be translated as provided in section 986(a)(2)(A).

(3) Adjustments

The amount of tax (if any) due on any redetermination under paragraph (1) shall be paid by the taxpayer on notice and demand by the Secretary, and the amount of tax overpaid (if any) shall be credited or refunded to the taxpayer in accordance with subchapter B of chapter 66 (section 6511 et seq.).

(4) Bond requirements

In the case of any tax accrued but not paid, the Secretary, as a condition precedent to the allowance of the credit provided in this subpart, may require the taxpayer to give a bond, with sureties satisfactory to and approved by the Secretary, in such sum as the Secretary may require, conditioned on the payment by the taxpayer of any amount of tax found due on any such redetermination. Any such bond shall contain such further conditions as the Secretary may require.

(5) Other special rules

In any redetermination under paragraph (1) by the Secretary of the amount of tax due from the taxpayer for the year or years affected by a refund, the amount of the taxes refunded for which credit has been allowed under this section shall be reduced by the amount of any tax described in section 901 imposed by the foreign country or possession of the United States with respect to such refund; but no credit under this subpart, or deduction under section 164, shall be allowed for any taxable year with respect to any such tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country or possession of the United States on such refund for such period.

(Aug. 16, 1954, ch. 736, 68A Stat. 288; Pub. L. 85–866, title I, § 103(b), Sept. 2, 1958, 72 Stat. 1675; Pub. L. 94–455, title XIX, §§ 1901(a)(114), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1784, 1834; Pub. L. 96–603, § 2(c)(1), Dec. 28, 1980, 94 Stat. 3509; Pub. L. 97–248, title III, § 343(a), Sept. 3, 1982, 96 Stat. 635; Pub. L. 105–34, title XI, § 1102(a)(2), Aug. 5, 1997, 111 Stat. 964.)

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–34 amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Secretary, who shall redetermine the amount of the tax for the year or years affected. The amount of tax due on such redetermination, if any, shall be paid by the taxpayer on notice and demand by the Secretary, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in

accordance with subchapter B of chapter 66 (sec. 6511 and following). In the case of such a tax accrued but not paid, the Secretary, as a condition precedent to the allowance of this credit, may require the taxpayer to give a bond, with sureties satisfactory to and to be approved by the Secretary, in such sum as the Secretary may require, conditioned on the payment by the taxpayer of any amount of tax found due on any such redetermination; and the bond herein prescribed shall contain such further conditions as the Secretary may require. In such redetermination by the Secretary of the amount of tax due from the taxpayer for the year or years affected by a refund, the amount of the taxes refunded for which credit has been allowed under this section shall be reduced by the amount of any tax described in section 901 imposed by the foreign country or possession of the United States with respect to such refund; but no credit under this subpart, and no deduction under section 164 (relating to deduction for taxes) shall be allowed for any taxable year with respect to such tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country or possession of the United States on such refund for such period.''

1982—Subsec. (c). Pub. L. 97–248, §343(a), struck out provision that, although no interest can be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest has been paid by the foreign country or possession of the United States on such refund for such period, that prohibition does not apply (with respect to any period after the refund or adjustment in the foreign taxes) if the taxpayer fails to notify the Secretary (on or before the date prescribed by regulations for giving such notice) unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

1980—Subsec. (c). Pub. L. 96–603 inserted provision that the preceding sentence not apply, with respect to any period after the refund or adjustment in the foreign taxes, if the taxpayer fails to notify the Secretary, on or before the date prescribed by regulations for giving such notice, unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

1976—Subsec. (b). Pub. L. 94–455, §§1901(a)(114), 1906(b)(13)(A), struck out provision allowing credits to be taken for tax on royalties paid, accrued and derived from sources within the United Kingdom of Britain and Northern Ireland and struck out ''or his delegate'' after ''Secretary'', in two places.

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in eight places.

1958—Subsec. (b). Pub. L. 85–866 inserted sentence deeming recipient of a royalty or other amount for use of copyright, patent, and other like property derived from sources within United Kingdom, to have paid or accrued taxes paid or accrued to United Kingdom with respect to royalty if recipient elects to include in its gross income the amount of such United Kingdom tax.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1102(c)(2) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a)(2) [amending this section] shall apply to taxes which relate to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 343(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall have the same effect as if the last sentence of section 905(c) had never been enacted.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–603 applicable with respect to employer contributions or accruals for taxable years beginning after Dec. 31, 1979, election to apply amendments retroactively with respect to foreign subsidiaries, allowance or prior deductions in case of certain funded branch plans, and time and manner for making elections, see section 2(e) of Pub. L. 96–603, set out as an Effective Date note under section 404A of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(114) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 103(c) of Pub. L. 85–866 provided that: ''The amendment made by subsection (a) of this section [amending section 131(e) of Internal Revenue Code of 1939] shall apply for all taxable years beginning on or after January 1, 1950, as to which section 131 of the Internal Revenue Code of 1939 is the applicable provision. The amendment made by subsection (b) of this section [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. No interest shall be allowed or paid on any overpayment resulting from the amendments made by subsections (a) and (b) of this section.''

§906. Nonresident alien individuals and foreign corporations

(a) Allowance of credit

A nonresident alien individual or a foreign corporation engaged in trade or business within the United States during the taxable year shall be allowed a credit under section 901 for the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year (or deemed, under section 902, paid or accrued during the taxable year) to any foreign country or possession of the United States with respect to income effectively connected with the conduct of a trade or business within the United States.

(b) Special rules

(1) For purposes of subsection (a) and for purposes of determining the deductions allowable under sections 873(a) and 882(c), in determining the amount of any tax paid or accrued to any foreign country or possession there shall not be taken into account any amount of tax to the extent the tax so paid or accrued is imposed with respect to income from sources within the United States which would not be taxed by such foreign country or possession but for the fact that—

(A) in the case of a nonresident alien individual, such individual is a citizen or resident of such foreign country or possession, or

(B) in the case of a foreign corporation, such corporation was created or organized under the law of such foreign country or possession or is domiciled for tax purposes in such country or possession.

(2) For purposes of subsection (a), in applying section 904 the taxpayer's taxable income shall be treated as consisting only of the taxable income effectively connected with the taxpayer's conduct of a trade or business within the United States.

(3) The credit allowed pursuant to subsection (a) shall not be allowed against any tax imposed by section 871(a) (relating to income of nonresident alien individual not connected with

United States business) or 881 (relating to income of foreign corporations not connected with United States business).

(4) For purposes of sections 902(a) and 78, a foreign corporation choosing the benefits of this subpart which receives dividends shall, with respect to such dividends, be treated as a domestic corporation.

(5) For purposes of section 902, any income, war profits, and excess profits taxes paid or accrued (or deemed paid or accrued) to any foreign country or possession of the United States with respect to income effectively connected with the conduct of a trade or business within the United States shall not be taken into account, and any accumulated profits attributable to such income shall not be taken into account.

(6) No credit shall be allowed under this section against the tax imposed by section 884.

(Added Pub. L. 89–809, title I, § 106(a)(1), Nov. 13, 1966, 80 Stat. 1568; amended Pub. L. 98–369, div. A, title VIII, § 801(d)(3), July 18, 1984, 98 Stat. 996; Pub. L. 99–514, title XII, § 1241(c), title XVIII, § 1876(d)(3), Oct. 22, 1986, 100 Stat. 2580, 2899; Pub. L. 100–647, title I, § 1012(q)(10), Nov. 10, 1988, 102 Stat. 3524; Pub. L. 110–172, § 11(g)(11), Dec. 29, 2007, 121 Stat. 2490.)

AMENDMENTS

2007—Subsec. (b)(5) to (7). Pub. L. 110–172 redesignated pars. (6) and (7) as (5) and (6), respectively, and struck out former par. (5) which read as follows: ''No credit shall be allowed under this section for any income, war profits, and excess profits taxes paid or accrued with respect to the foreign trade income (within the meaning of section 923(b)) of a FSC.''

1988—Subsec. (b)(6), (7). Pub. L. 100–647 redesignated par. (6), relating to credit against tax imposed by section 884, as (7).

1986—Subsec. (b)(6). Pub. L. 99–514, § 1876(d)(3), added par. (6) relating to credit for income, war profits, and excess profits taxes paid or accrued to a foreign country or possession of the United States.

Pub. L. 99–514, § 1241(c), added par. (6) relating to credit against tax imposed by section 884.

1984—Subsec. (b)(5). Pub. L. 98–369 added par. (5).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1241(c) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1241(e) of Pub. L. 99–514, set out as an Effective Date note under section 884 of this title.

Amendment by section 1876(d)(3) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1966, and, in applying section 904 of this title with respect to this section, no amount to be carried from or to any taxable year beginning before Jan. 1, 1967, and no such year to be taken into account, see section 106(a)(6) of Pub. L. 89–809, set out as an Effective Date of 1966 Amendment note under section 874 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 907. Special rules in case of foreign oil and gas income

(a) Reduction in amount allowed as foreign tax under section 901

In applying section 901, the amount of any foreign oil and gas taxes paid or accrued (or deemed to have been paid) during the taxable year which would (but for this subsection) be taken into account for purposes of section 901 shall be reduced by the amount (if any) by which the amount of such taxes exceeds the product of—

(1) the amount of the combined foreign oil and gas income for the taxable year,

(2) multiplied by—

(A) in the case of a corporation, the percentage which is equal to the highest rate of tax specified under section 11(b), or

(B) in the case of an individual, a fraction the numerator of which is the tax against which the credit under section 901(a) is taken and the denominator of which is the taxpayer's entire taxable income.

(b) Combined foreign oil and gas income; foreign oil and gas taxes

For purposes of this section—

(1) Combined foreign oil and gas income

The term ''combined foreign oil and gas income'' means, with respect to any taxable year, the sum of—

(A) foreign oil and gas extraction income, and

(B) foreign oil related income.

(2) Foreign oil and gas taxes

The term ''foreign oil and gas taxes'' means, with respect to any taxable year, the sum of—

(A) oil and gas extraction taxes, and

(B) any income, war profits, and excess profits taxes paid or accrued (or deemed to have been paid or accrued under section 902 or 960) during the taxable year with respect to foreign oil related income (determined without regard to subsection (c)(4)) or loss which would be taken into account for purposes of section 901 without regard to this section.

(c) Foreign income definitions and special rules

For purposes of this section—

(1) Foreign oil and gas extraction income

The term ''foreign oil and gas extraction income'' means the taxable income derived from

sources without the United States and its possessions from—

(A) the extraction (by the taxpayer or any other person) of minerals from oil or gas wells, or

(B) the sale or exchange of assets used by the taxpayer in the trade or business described in subparagraph (A).

Such term does not include any dividend or interest income which is passive income (as defined in section 904(d)(2)(A)).

(2) Foreign oil related income

The term ''foreign oil related income'' means the taxable income derived from sources outside the United States and its possessions from—

(A) the processing of minerals extracted (by the taxpayer or by any other person) from oil or gas wells into their primary products,

(B) the transportation of such minerals or primary products,

(C) the distribution or sale of such minerals or primary products,

(D) the disposition of assets used by the taxpayer in the trade or business described in subparagraph (A), (B), or (C), or

(E) the performance of any other related service.

Such term does not include any dividend or interest income which is passive income (as defined in section 904(d)(2)(A)).

(3) Dividends, interest, partnership distribution, etc.

The term ''foreign oil and gas extraction income'' and the term ''foreign oil related income'' include—

(A) dividends and interest from a foreign corporation in respect of which taxes are deemed paid by the taxpayer under section 902,

(B) amounts with respect to which taxes are deemed paid under section 960(a), and

(C) the taxpayer's distributive share of the income of partnerships.[1]

to the extent such dividends, interest, amounts, or distributive share is attributable to foreign oil and gas extraction income, or to foreign oil related income, as the case may be; except that interest described in subparagraph (A) shall not be taken into account in computing foreign oil and gas extraction income but shall be taken into account in computing foreign oil-related income.

(4) Recapture of foreign oil and gas losses by recharacterizing later combined foreign oil and gas income

(A) In general

The combined foreign oil and gas income of a taxpayer for a taxable year (determined without regard to this paragraph) shall be reduced—

(i) first by the amount determined under subparagraph (B), and

(ii) then by the amount determined under subparagraph (C).

The aggregate amount of such reductions shall be treated as income (from sources without the United States) which is not combined foreign oil and gas income.

(B) Reduction for pre-2009 foreign oil extraction losses

The reduction under this paragraph shall be equal to the lesser of—

(i) the foreign oil and gas extraction income of the taxpayer for the taxable year (determined without regard to this paragraph), or

(ii) the excess of—

(I) the aggregate amount of foreign oil extraction losses for preceding taxable years beginning after December 31, 1982, and before January 1, 2009, over

(II) so much of such aggregate amount as was recharacterized under this paragraph (as in effect before and after the date of the enactment of the Energy Improvement and Extension Act of 2008) for preceding taxable years beginning after December 31, 1982.

(C) Reduction for post-2008 foreign oil and gas losses

The reduction under this paragraph shall be equal to the lesser of—

(i) the combined foreign oil and gas income of the taxpayer for the taxable year (determined without regard to this paragraph), reduced by an amount equal to the reduction under subparagraph (A) for the taxable year, or

(ii) the excess of—

(I) the aggregate amount of foreign oil and gas losses for preceding taxable years beginning after December 31, 2008, over

(II) so much of such aggregate amount as was recharacterized under this paragraph for preceding taxable years beginning after December 31, 2008.

(D) Foreign oil and gas loss defined

(i) In general

For purposes of this paragraph, the term ''foreign oil and gas loss'' means the amount by which—

(I) the gross income for the taxable year from sources without the United States and its possessions (whether or not the taxpayer chooses the benefits of this subpart for such taxable year) taken into account in determining the combined foreign oil and gas income for such year, is exceeded by

(II) the sum of the deductions properly apportioned or allocated thereto.

(ii) Net operating loss deduction not taken into account

For purposes of clause (i), the net operating loss deduction allowable for the taxable year under section 172(a) shall not be taken into account.

(iii) Expropriation and casualty losses not taken into account

For purposes of clause (i), there shall not be taken into account—

[1] So in original. The period probably should be a comma.

(I) any foreign expropriation loss (as defined in section 172(h) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)) for the taxable year, or

(II) any loss for the taxable year which arises from fire, storm, shipwreck, or other casualty, or from theft,

to the extent such loss is not compensated for by insurance or otherwise.

(iv) Foreign oil extraction loss

For purposes of subparagraph (B)(ii)(I), foreign oil extraction losses shall be determined under this paragraph as in effect on the day before the date of the enactment of the Energy Improvement and Extension Act of 2008.

(5) Oil and gas extraction taxes

The term ''oil and gas extraction taxes'' means any income, war profits, and excess profits tax paid or accrued (or deemed to have been paid under section 902 or 960) during the taxable year with respect to foreign oil and gas extraction income (determined without regard to paragraph (4)) or loss which would be taken into account for purposes of section 901 without regard to this section.

(d) Disregard of certain posted prices, etc.

For purposes of this chapter, in determining the amount of taxable income in the case of foreign oil and gas extraction income, if the oil or gas is disposed of, or is acquired other than from the government of a foreign country, at a posted price (or other pricing arrangement) which differs from the fair market value for such oil or gas, such fair market value shall be used in lieu of such posted price (or other pricing arrangement).

[(e) Repealed. Pub. L. 101–508, title XI, § 11801(a)(32), Nov. 5, 1990, 104 Stat. 1388–521]

(f) Carryback and carryover of disallowed credits

(1) In general

If the amount of the foreign oil and gas taxes paid or accrued during any taxable year exceeds the limitation provided by subsection (a) for such taxable year (hereinafter in this subsection referred to as the ''unused credit year''), such excess shall be deemed to be foreign oil and gas taxes paid or accrued in the first preceding taxable year and in any of the first 10 succeeding taxable year,[2] in that order and to the extent not deemed tax paid or accrued in a prior taxable year by reason of the limitation imposed by paragraph (2). Such amount deemed paid or accrued in any taxable year may be availed of only as a tax credit and not as a deduction and only if the taxpayer for such year chooses to have the benefits of this subpart as to taxes paid or accrued for that year to foreign countries or possessions.

(2) Limitation

The amount of the unused foreign oil and gas taxes which under paragraph (1) may be deemed paid or accrued in any preceding or succeeding taxable year shall not exceed the lesser of—

(A) the amount by which the limitation provided by subsection (a) for such taxable year exceeds the sum of—

(i) the foreign oil and gas taxes paid or accrued during such taxable year, plus

(ii) the amounts of the foreign oil and gas taxes which by reason of this subsection are deemed paid or accrued in such taxable year and are attributable to taxable years preceding the unused credit year; or

(B) the amount by which the limitation provided by section 904 for such taxable year exceeds the sum of—

(i) the taxes paid or accrued (or deemed to have been paid under section 902 or 960) to all foreign countries and possessions of the United States during such taxable year,

(ii) the amount of such taxes which were deemed paid or accrued in such taxable year under section 904(c) and which are attributable to taxable years preceding the unused credit year, plus

(iii) the amount of the foreign oil and gas taxes which by reason of this subsection are deemed paid or accrued in such taxable year and are attributable to taxable years preceding the unused credit year.

(3) Special rules

(A) In the case of any taxable year which is an unused credit year under this subsection and which is an unused credit year under section 904(c), the provisions of this subsection shall be applied before section 904(c).

(B) For purposes of determining the amount of taxes paid or accrued in any taxable year which may be deemed paid or accrued in a preceding or succeeding taxable year under section 904(c), any tax deemed paid or accrued in such preceding or succeeding taxable year under this subsection shall be considered to be tax paid or accrued in such preceding or succeeding taxable year.

(4) Transition rules for pre-2009 and 2009 disallowed credits

(A) Pre-2009 credits

In the case of any unused credit year beginning before January 1, 2009, this subsection shall be applied to any unused oil and gas extraction taxes carried from such unused credit year to a year beginning after December 31, 2008—

(i) by substituting ''oil and gas extraction taxes'' for ''foreign oil and gas taxes'' each place it appears in paragraphs (1), (2), and (3), and

(ii) by computing, for purposes of paragraph (2)(A), the limitation under subparagraph (A) for the year to which such taxes are carried by substituting ''foreign oil and gas extraction income'' for ''foreign oil and gas income'' in subsection (a).

(B) 2009 credits

In the case of any unused credit year beginning in 2009, the amendments made to

[2] So in original. Probably should be ''years,''.

this subsection by the Energy Improvement and Extension Act of 2008 shall be treated as being in effect for any preceding year beginning before January 1, 2009, solely for purposes of determining how much of the unused foreign oil and gas taxes for such unused credit year may be deemed paid or accrued in such preceding year.

(Added Pub. L. 94–12, title VI, §601(a), Mar. 29, 1975, 89 Stat. 54; amended Pub. L. 94–455, title X, §§1031(b)(6), 1032(b), 1035(a), (b), (d)(1), (2), 1052(c)(4), Oct. 4, 1976, 90 Stat. 1623, 1626, 1630–1632, 1648; Pub. L. 95–600, title III, §301(b)(14), title VII, §701(u)(8)(A), (B), Nov. 6, 1978, 92 Stat. 2822, 2916; Pub. L. 97–248, title II, §211(a)–(c)(1), (d), Sept. 3, 1982, 96 Stat. 448–450; Pub. L. 100–647, title I, §1012(g)(6), Nov. 10, 1988, 102 Stat. 3501; Pub. L. 101–508, title XI, §11801(a)(32), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 103–66, title XIII, §13235(a)(1), Aug. 10, 1993, 107 Stat. 504; Pub. L. 104–188, title I, §1704(t)(36), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 108–357, title IV, §417(b), Oct. 22, 2004, 118 Stat. 1512; Pub. L. 110–343, div. B, title IV, §402(a)–(c), Oct. 3, 2008, 122 Stat. 3852, 3854.)

REFERENCES IN TEXT

The date of the enactment of the Energy Improvement and Extension Act of 2008, referred to in subsec. (c)(4)(B)(ii)(II), (D)(iv), is the date of enactment of div. B of Pub. L. 110–343, which was approved Oct. 3, 2008.

Section 172(h), referred to in subsec. (c)(4)(D)(iii)(I), was repealed by Pub. L. 101–508, title XI, §11811(b)(1), Nov. 5, 1990, 104 Stat. 1388–532.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (c)(4)(D)(iii)(I), is the date of enactment of Pub. L. 101–508, title XI, which was approved Nov. 5, 1990.

The Energy Improvement and Extension Act of 2008, referred to in subsec. (f)(4)(B), is div. B of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3807. For the amendments made to subsec. (f) of this section by the Act, see 2008 Amendment notes below.

AMENDMENTS

2008—Subsecs. (a), (b). Pub. L. 110–343, §402(a), amended subsecs. (a) and (b) generally. Prior to amendment, subsec. (a) related to reduction in amount of oil and gas extraction taxes paid or accrued for purposes of section 901 and subsec. (b) excepted certain amounts of foreign oil related income taxes paid or accrued to any foreign country from the definition of ''income, war profits, and excess profits taxes''.

Subsec. (c)(4). Pub. L. 110–343, §402(b), amended par. (4) generally. Prior to amendment, par. (4) provided for recapture of foreign oil and gas extraction losses by recharacterizing later extraction income.

Subsec. (f). Pub. L. 110–343, §402(c)(1), substituted ''foreign oil and gas taxes'' for ''oil and gas extraction taxes'' wherever appearing.

Subsec. (f)(4). Pub. L. 110–343, §402(c)(2), added par. (4).

2004—Subsec. (f)(1). Pub. L. 108–357, §417(b)(3), struck out at end ''For purposes of this subsection, the terms 'second preceding taxable year', and 'first preceding taxable year' do not include any taxable year ending before January 1, 1975.''

Pub. L. 108–357, §417(b)(2), substituted ''and in any of the first 10'' for '', and in the first, second, third, fourth, or fifth''.

Pub. L. 108–357, §417(b)(1), struck out ''in the second preceding taxable year,'' before ''in the first preceding taxable year''.

1996—Subsec. (c)(4)(B)(iii)(I). Pub. L. 104–188 inserted ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)'' after ''section 172(h)''.

1993—Subsec. (c)(1), (2). Pub. L. 103–66 inserted concluding provisions.

1990—Subsec. (e). Pub. L. 101–508, §11801(a)(32), struck out subsec. (e) which read as follows:

''(1) CREDITS ARISING IN TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1983.—The amount of taxes paid or accrued in any taxable year beginning before January 1, 1983 (hereinafter in this paragraph referred to as the 'excess credit year') which under section 904(c) or 907(f) may be deemed paid or accrued in a taxable year beginning after December 31, 1982, shall not exceed the amount which could have been deemed paid or accrued if sections 907(b), 907(f), and 904(f)(4) (as in effect on the day before the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) remained in effect for taxable years beginning after December 31, 1982.

''(2) CARRYBACK OF CREDITS ARISING IN TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1982.—The amount of the taxes paid or accrued in a taxable year beginning after December 31, 1982, which may be deemed paid or accrued under section 904(c) or 907(f) in a taxable year beginning before January 1, 1983, shall not exceed the amount which could have been deemed paid or accrued if sections 907(b), 907(f), and 904(f)(4) (as in effect on the day before the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) remained in effect for taxable years beginning after December 31, 1982.''

Subsec. (f)(3)(C). Pub. L. 101–508, §11801(a)(32), struck out subpar. (C) which read as follows: ''For purposes of determining the amount of the unused oil and gas extraction taxes which under paragraph (1) may be deemed paid or accrued in any taxable year ending before January 1, 1977, subparagraph (A) of paragraph (2) shall be applied as if the amendment made by section 1035(a) of the Tax Reform Act of 1976 applied to such taxable year.''

1988—Subsec. (c)(3). Pub. L. 100–647, §1012(g)(6)(B), struck out ''and dividends described in subparagraph (B)'' after ''described in subparagraph (A)'' in closing provisions.

Subsec. (c)(3)(B) to (D). Pub. L. 100–647, §1012(g)(6)(A), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read as follows: ''dividends from a domestic corporation which are treated under section 861(a)(2)(A) as income from sources without the United States,''.

1982—Subsec. (b). Pub. L. 97–248, §211(c)(1), added subsec. (b). Former subsec. (b), which had provided that section 904 be applied separately with respect to foreign oil related income and other taxable income, was struck out.

Subsec. (c)(2). Pub. L. 97–248, §211(b), in subpar. (A) substituted ''the processing of minerals extracted (by the taxpayer or by any other person) from oil or gas wells into their primary products'' for ''the extraction (by the taxpayer or any other person) of minerals from oil or gas wells'', deleted subpar. (B) which had provided that foreign oil related income meant the taxable income derived from sources outside the United States and its possessions from the processing of minerals from oil or gas wells into their primary products, redesignated subpar. (C) as (B), redesignated subpar. (D) as (C) and in subpar. (C) as so redesignated struck out ''or'' at the end, redesignated subpar. (E) as (D) and in subpar. (D) as so redesignated substituted ''disposition'' for ''sale or exchange'', and ''or (C), or'' for ''(C), or (D)'', struck out the period at the end, and added subpar. (E).

Subsec. (c)(4). Pub. L. 97–248, §211(a), substituted provisions regarding the recapture of foreign oil and gas extraction losses by recharacterization of later extraction income for provisions that if, for any foreign country for any taxable year, the taxpayer would have had a net operating loss if only items from sources within such country (including deductions properly apportioned or allocated thereto) which related to the extraction of minerals from oil or gas wells had been taken into account, such items would not be taken into account in computing foreign oil and gas extraction in-

come for such year, but would be taken into account in computing foreign oil related income for such year.

Subsec. (e). Pub. L. 97–248, § 211(d)(1), substituted rules regarding credits arising in taxable years beginning before Jan. 1, 1983, for rules regarding taxable years ending after Dec. 31, 1974, in par. (1), and in par. (2) substituted rules regarding carryback of credits arising in taxable years beginning after Dec. 31, 1982, for rules regarding taxable years ending after Dec. 31, 1975.

Subsec. (f)(1). Pub. L. 97–248, § 211(d)(2)(A), substituted ''such excess'' for ''so much of such excess as does not exceed 2 percent of foreign oil and gas extraction income for such taxable year'' in first sentence, and struck out former provision that had directed that the above substitution be made regarding taxes deemed paid or accrued in any taxable year which ended in 1975, 1976, or 1977.

Subsec. (f)(2)(B). Pub. L. 97–248, § 211(d)(2)(B)(i), substituted ''provided by section 904 for such taxable year'' for ''provided by section 904 on taxes paid or accrued with respect to foreign oil-related income for such taxable year'' in the introductory provisions, and in cl. (i) substituted ''the United States during such taxable year'' for ''the United States with respect to such income during such taxable year''.

Subsec. (f)(3)(A). Pub. L. 97–248, § 211(d)(2)(B)(ii), substituted ''section 904(c)'' for ''section 904(c) with respect to oil-related income''.

Subsec. (f)(3)(B). Pub. L. 97–248, § 211(d)(2)(B)(iii), struck out ''oil-related'' after ''determining the amount of''.

1978—Subsec. (a)(2). Pub. L. 95–600, §§ 301(b)(14), 701(u)(8)(A), designated existing provisions as subpar. (A), inserted applicability to corporations and generally reworked applicable formula, and added subpar. (B).

Subsec. (b). Pub. L. 95–600, § 701(u)(8)(B), substituted provisions relating to applicability of section 904 separately to foreign oil related income and other taxable income for provisions relating to applicability of section 904 to corporations and other taxpayers.

1976—Subsec. (a). Pub. L. 94–455, § 1035(a), substituted ''oil and gas extraction taxes'' for ''income, war profits, and excess profits taxes'' after ''the amount of any'' and, in par. (2), substituted ''the percentage which is the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11'' for provisions giving the percentage multiplier for years ending 1975, 1976, and after 1976.

Subsec. (b). Pub. L. 94–455, §§ 1032(b)(1), 1035(b), inserted provisions making a distinction between corporations and other taxpayers and rules applicable to each and, as amended, struck out provision requiring the overall limitation, rather than the per-country limitation, be applied in the case of a corporation to foreign oil-related income and, a taxpayer other than a corporation, to foreign oil and gas extraction income.

Subsec. (c)(5). Pub. L. 94–455, § 1035(d)(2), added par. (5).

Subsec. (e)(1). Pub. L. 94–455, § 1031(b)(6)(A), substituted ''(d) and (e) of section 904 (as in effect on the day before the date of enactment of the Tax Reform Act of 1976)'' for ''(d) and (e) of section 904'' after ''In applying subsections''.

Subsec. (e)(2). Pub. L. 94–455, § 1031(b)(6), substituted ''(d) and (e) of section 904 (as in effect on the day before the date of enactment of the Tax Reform Act of 1976)'' for ''(d) and (e) of section 904'' after ''In applying subsections'', ''section 904(a)(1) (as so in effect)'' for ''section 904(a)(1)'' after ''provided by section'' and, in subpar. (A), ''section 904(e)(2) (as so in effect)'' for ''section 904(e)(2)'' after ''sentence of section''.

Subsec. (f). Pub. L. 94–455, §§ 1032(b)(2), 1035(d)(1), added subsec. (f). Former subsec. (f), relating to recapture of foreign oil related loss, was struck out.

Subsec. (g). Pub. L. 94–455, §§ 1032(b)(2), 1035(d)(1), 1052(c)(4), struck out subsec. (g) relating to Western Hemisphere trade corporations which are members of an affiliated group.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. B, title IV, § 402(e), Oct. 3, 2008, 122 Stat. 3854, provided that: ''The amendments made by this section [amending this section and section 6501 of this title] shall apply to taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 417(b)(1) of Pub. L. 108–357 applicable to excess foreign taxes arising in taxable years beginning after Oct. 22, 2004, and amendment by section 417(b)(2) of Pub. L. 108–357 applicable to excess foreign taxes which may be carried to any taxable year ending after Oct. 22, 2004, see section 417(c) of Pub. L. 108–357, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13235(c) of Pub. L. 103–66, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 211(e) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 306(a)(5), 96 Stat. 2401; Pub. L. 98–369, div. A, title VII, § 712(e), July 18, 1984, 98 Stat. 947, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 904 of this title] shall apply to taxable years beginning after December 31, 1982.

''(2) RETENTION OF OLD SECTIONS 907(b) AND 904(f)(4) WHERE TAXPAYER HAD SEPARATE BASKET FOREIGN LOSS.—

''(A) IN GENERAL.—If, after applying old sections 907(b) and 904(f)(4) to a taxable year beginning before January 1, 1983, the taxpayer had a separate basket foreign loss, such loss shall not be recaptured from income of a kind not taken into account in computing the amount of such separate basket foreign loss more rapidly than ratably over the 8-year period (or such shorter period as the taxpayer may select) beginning with the first taxable year beginning after December 31, 1982.

''(B) DEFINITIONS.—For purposes of this paragraph—

''(i) The term 'separate basket foreign loss' means any foreign loss attributable to activities taken into account (or not taken into account) in determining foreign oil related income (as defined in old section 907(c)(2)).

''(ii) An 'old' section is such section as in effect on the day before the date of the enactment of this Act [Sept. 3, 1982].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(14) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

Section 701(u)(8)(D) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(i) The amendments made by this paragraph [amending this section and section 904 of this title] shall apply, in the case of individuals, to taxable years ending after December 31, 1974, and, in the case of corporations, to taxable years ending after December 31, 1976.

''(ii) In the case of any taxable year ending after December 31, 1975, with respect to foreign oil related income (within the meaning of section 907(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), the

overall limitation provided by section 904(a)(2) of such Code shall apply and the per-country limitation provided by section 904(a)(1) of such Code shall not apply.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(6)(A) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with exceptions for certain mining operations, income from possessions, and carryback and carryover in the case of mining operations and income from a possession, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Amendment by section 1032(b)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, and amendment by section 1032(b)(2) of Pub. L. 94–455 applicable to losses sustained in taxable years beginning after Dec. 31, 1975, see section 1032(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Section 1035(e) of Pub. L. 94–455, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1976.

''(2) The amendment made by subsection (b) [amending this section] shall apply to taxable years ending after December 31, 1974; except that the last sentence of section 907(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall only apply to taxable years ending after December 31, 1975.

''(3) The amendment made by subsection (c) [enacting provisions set out below] shall apply to taxable years beginning after June 29, 1976.

''(4) The amendments made by subsection (d) [amending this section] shall apply to taxes paid or accrued during taxable years ending after the date of the enactment of this Act [Oct. 4, 1976].''

Amendment by section 1052(c)(4) of Pub. L. 94–455 effective with respect to taxable years beginning after December 31, 1979, see section 1052(d) of Pub. L. 94–455, set out as a note under section 170 of this title.

EFFECTIVE DATE

Section 601(d) of Pub. L. 94–12 provided that: ''The amendments made by this section [enacting this section and amending section 901 of this title] shall apply to taxable years ending after December 31, 1974; except that—

''(1) the second sentence of section 907(b) shall apply to taxable years ending after December 31, 1975, and

''(2) the provisions of section 907(f) shall apply to losses sustained in taxable years ending after December 31, 1975.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TAX CREDIT FOR PRODUCTION-SHARING CONTRACTS

Section 1035(c) of Pub. L. 94–455, as amended by Pub. L. 95–600, title VII, §§701(u)(9), 703(h)(1), Nov. 6, 1978, 92 Stat. 2916, 2940; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) For purposes of section 901 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], there shall be treated as income, war profits, and excess profits taxes to be taken into account under section 907(a) of such Code amounts designated as income taxes of a foreign government by such government (which otherwise would not be treated as taxes for purposes of section 901 of such Code) with respect to production-sharing contracts for the extraction of foreign oil or gas.

''(2) The amounts specified in paragraph (1) shall not exceed the lessor of—

''(A) the product of the foreign oil and gas extraction income (as defined in section 907(c) of such Code) with respect to all such production-sharing contracts multiplied by the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11 of such Code, or

''(B) the excess of the total amount of foreign oil and gas extraction income (as so defined) for the taxable year multiplied by the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11 of such Code over the amount of any income, war profits, and excess profits taxes paid or accrued (or deemed to have been paid) without regard to paragraph (1) during the taxable year with respect to foreign oil and gas extraction income.

''(3) The production-sharing contracts taken into account for purposes of paragraph (1) shall be those contracts which were entered into before April 8, 1976, for the sharing of foreign oil and gas production with a foreign government (or an entity owned by such government) with respect to which amounts claimed as taxes paid or accrued to such foreign government for taxable years beginning before June 30, 1976, will not be disallowed as taxes. A contract described in the preceding sentence shall be taken into account under paragraph (1) only with respect to amounts (A) paid or accrued to the foreign government before January 1, 1978, and (B) attributable to income earned before such date.''

§908. Reduction of credit for participation in or cooperation with an international boycott

(a) In general

If a person, or a member of a controlled group (within the meaning of section 993(a)(3)) which includes such person, participates in or cooperates with an international boycott during the taxable year (within the meaning of section 999(b)), the amount of the credit allowable under section 901 to such person, or under section 902 or 960 to United States shareholders of such person, for foreign taxes paid during the taxable year shall be reduced by an amount equal to the product of—

(1) the amount of the credit which, but for this section, would be allowed under section 901 for the taxable year, multiplied by

(2) the international boycott factor (determined under section 999).

(b) Application with sections 275(a)(4) and 78

Section 275(a)(4) and section 78 shall not apply to any amount of taxes denied credit under subsection (a).

(Added Pub. L. 94–455, title X, §1061(a), Oct. 4, 1976, 90 Stat. 1649.)

EFFECTIVE DATE

Section 1066(a) of Pub. L. 94–455 provided that:

''(1) GENERAL RULE.—The amendments made by this part (other than by section 1065) [enacting this section and section 999 of this title and amending sections 952 and 995 of this title] apply to participation in or cooperation with an international boycott more than 30 days after the date of enactment of this Act [Oct. 4, 1976].

''(2) EXISTING CONTRACTS.—In the case of operations which constitute participation in or cooperation with an international boycott and which are carried out in accordance with the terms of a binding contract entered into before September 2, 1976, the amendments made by this part (other than by section 1065) apply to such participation or cooperation after December 31, 1977.''

§ 909. Suspension of taxes and credits until related income taken into account

(a) In general

If there is a foreign tax credit splitting event with respect to a foreign income tax paid or accrued by the taxpayer, such tax shall not be taken into account for purposes of this title before the taxable year in which the related income is taken into account under this chapter by the taxpayer.

(b) Special rules with respect to section 902 corporations

If there is a foreign tax credit splitting event with respect to a foreign income tax paid or accrued by a section 902 corporation, such tax shall not be taken into account—

(1) for purposes of section 902 or 960, or

(2) for purposes of determining earnings and profits under section 964(a),

before the taxable year in which the related income is taken into account under this chapter by such section 902 corporation or a domestic corporation which meets the ownership requirements of subsection (a) or (b) of section 902 with respect to such section 902 corporation.

(c) Special rules

For purposes of this section—

(1) Application to partnerships, etc.

In the case of a partnership, subsections (a) and (b) shall be applied at the partner level. Except as otherwise provided by the Secretary, a rule similar to the rule of the preceding sentence shall apply in the case of any S corporation or trust.

(2) Treatment of foreign taxes after suspension

In the case of any foreign income tax not taken into account by reason of subsection (a) or (b), except as otherwise provided by the Secretary, such tax shall be so taken into account in the taxable year referred to in such subsection (other than for purposes of section 986(a)) as a foreign income tax paid or accrued in such taxable year.

(d) Definitions

For purposes of this section—

(1) Foreign tax credit splitting event

There is a foreign tax credit splitting event with respect to a foreign income tax if the related income is (or will be) taken into account under this chapter by a covered person.

(2) Foreign income tax

The term ''foreign income tax'' means any income, war profits, or excess profits tax paid or accrued to any foreign country or to any possession of the United States.

(3) Related income

The term ''related income'' means, with respect to any portion of any foreign income tax, the income (or, as appropriate, earnings and profits) to which such portion of foreign income tax relates.

(4) Covered person

The term ''covered person'' means, with respect to any person who pays or accrues a foreign income tax (hereafter in this paragraph referred to as the ''payor'')—

(A) any entity in which the payor holds, directly or indirectly, at least a 10 percent ownership interest (determined by vote or value),

(B) any person which holds, directly or indirectly, at least a 10 percent ownership interest (determined by vote or value) in the payor,

(C) any person which bears a relationship to the payor described in section 267(b) or 707(b), and

(D) any other person specified by the Secretary for purposes of this paragraph.

(5) Section 902 corporation

The term ''section 902 corporation'' means any foreign corporation with respect to which one or more domestic corporations meets the ownership requirements of subsection (a) or (b) of section 902.

(e) Regulations

The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this section, including regulations or other guidance which provides—

(1) appropriate exceptions from the provisions of this section, and

(2) for the proper application of this section with respect to hybrid instruments.

(Added Pub. L. 111–226, title II, § 211(a), Aug. 10, 2010, 124 Stat. 2394.)

EFFECTIVE DATE

Pub. L. 111–226, title II, § 211(c), Aug. 10, 2010, 124 Stat. 2395, provided that: ''The amendments made by this section [enacting this section] shall apply to—

''(1) foreign income taxes (as defined in section 909(d) of the Internal Revenue Code of 1986, as added by this section) paid or accrued in taxable years beginning after December 31, 2010; and

''(2) foreign income taxes (as so defined) paid or accrued by a section 902 corporation (as so defined) in taxable years beginning on or before such date (and not deemed paid under section 902(a) or 960 of such Code on or before such date), but only for purposes of applying sections 902 and 960 with respect to periods after such date.

Section 909(b)(2) of the Internal Revenue Code of 1986, as added by this section, shall not apply to foreign income taxes described in paragraph (2).''

SUBPART B—EARNED INCOME OF CITIZENS OR RESIDENTS OF UNITED STATES

Sec.
911. Citizens or residents of the United States living abroad.
912. Exemption for certain allowances.
[913. Repealed.]

AMENDMENTS

1981—Pub. L. 97–34, title I, §§ 111(b)(1), 112(b)(1), Aug. 13, 1981, 95 Stat. 194, 195, substituted ''Citizens or residents of the United States living abroad'' for ''Income earned by individuals in certain camps or from charitable services'' in item 911 and struck out item 913 ''Deduction for certain expenses of living abroad''.

1980—Pub. L. 96–595, § 4(c)(2), Dec. 24, 1980, 94 Stat. 3467, inserted ''or from charitable services'' after ''camps'' in item 911.

1978—Pub. L. 95–615, §§ 202(g)(2), (3), 203(c), formerly §§ 202(f)(2), (3), 203(c), Nov. 8, 1978, 92 Stat. 3100, 3106, re-

numbered Pub. L. 96–222, title I, §108(a)(1)(A), Apr. 1, 1980, 94 Stat. 223, inserted in subpart heading ''or Residents'' after ''Citizens'', substituted in item 911 ''Income earned by individuals in certain camps'' for ''Earned income from sources without the United States'', and added item 913.

§911. Citizens or residents of the United States living abroad

(a) Exclusion from gross income

At the election of a qualified individual (made separately with respect to paragraphs (1) and (2)), there shall be excluded from the gross income of such individual, and exempt from taxation under this subtitle, for any taxable year—

(1) the foreign earned income of such individual, and

(2) the housing cost amount of such individual.

(b) Foreign earned income

(1) Definition

For purposes of this section—

(A) In general

The term ''foreign earned income'' with respect to any individual means the amount received by such individual from sources within a foreign country or countries which constitute earned income attributable to services performed by such individual during the period described in subparagraph (A) or (B) of subsection (d)(1), whichever is applicable.

(B) Certain amounts not included in foreign earned income

The foreign earned income for an individual shall not include amounts—

(i) received as a pension or annuity,

(ii) paid by the United States or an agency thereof to an employee of the United States or an agency thereof,

(iii) included in gross income by reason of section 402(b) (relating to taxability of beneficiary of nonexempt trust) or section 403(c) (relating to taxability of beneficiary under a nonqualified annuity), or

(iv) received after the close of the taxable year following the taxable year in which the services to which the amounts are attributable are performed.

(2) Limitation on foreign earned income

(A) In general

The foreign earned income of an individual which may be excluded under subsection (a)(1) for any taxable year shall not exceed the amount of foreign earned income computed on a daily basis at an annual rate equal to the exclusion amount for the calendar year in which such taxable year begins.

(B) Attribution to year in which services are performed

For purposes of applying subparagraph (A), amounts received shall be considered received in the taxable year in which the services to which the amounts are attributable are performed.

(C) Treatment of community income

In applying subparagraph (A) with respect to amounts received from services performed by a husband or wife which are community income under community property laws applicable to such income, the aggregate amount which may be excludable from the gross income of such husband and wife under subsection (a)(1) for any taxable year shall equal the amount which would be so excludable if such amounts did not constitute community income.

(D) Exclusion amount

(i) In general

The exclusion amount for any calendar year is the exclusion amount determined in accordance with the following table (as adjusted by clause (ii)):

For calendar year—	The exclusion amount is—
1998	$72,000
1999	74,000
2000	76,000
2001	78,000
2002 and thereafter	80,000.

(ii) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2005, the $80,000 amount in clause (i) shall be increased by an amount equal to the product of—

(I) such dollar amount, and

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''2004'' for ''1992'' in subparagraph (B) thereof.

If any increase determined under the preceding sentence is not a multiple of $100, such increase shall be rounded to the next lowest multiple of $100.

(c) Housing cost amount

For purposes of this section—

(1) In general

The term ''housing cost amount'' means an amount equal to the excess of—

(A) the housing expenses of an individual for the taxable year to the extent such expenses do not exceed the amount determined under paragraph (2), over

(B) an amount equal to the product of—

(i) 16 percent of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which such taxable year begins, multiplied by

(ii) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).

(2) Limitation

(A) In general

The amount determined under this paragraph is an amount equal to the product of—

(i) 30 percent (adjusted as may be provided under subparagraph (B)) of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which the taxable year of the individual begins, multiplied by

(ii) the number of days of such taxable year within the applicable period described

in subparagraph (A) or (B) of subsection (d)(1).

(B) Regulations

The Secretary may issue regulations or other guidance providing for the adjustment of the percentage under subparagraph (A)(i) on the basis of geographic differences in housing costs relative to housing costs in the United States.

(3) Housing expenses

(A) In general

The term ''housing expenses'' means the reasonable expenses paid or incurred during the taxable year by or on behalf of an individual for housing for the individual (and, if they reside with him, for his spouse and dependents) in a foreign country. The term—

(i) includes expenses attributable to the housing (such as utilities and insurance), but

(ii) does not include interest and taxes of the kind deductible under section 163 or 164 or any amount allowable as a deduction under section 216(a).

Housing expenses shall not be treated as reasonable to the extent such expenses are lavish or extravagant under the circumstances.

(B) Second foreign household

(i) In general

Except as provided in clause (ii), only housing expenses incurred with respect to that abode which bears the closest relationship to the tax home of the individual shall be taken into account under paragraph (1).

(ii) Separate household for spouse and dependents

If an individual maintains a separate abode outside the United States for his spouse and dependents and they do not reside with him because of living conditions which are dangerous, unhealthful, or otherwise adverse, then—

(I) the words ''if they reside with him'' in subparagraph (A) shall be disregarded, and

(II) the housing expenses incurred with respect to such abode shall be taken into account under paragraph (1).

(4) Special rules where housing expenses not provided by employer

(A) In general

To the extent the housing cost amount of any individual for any taxable year is not attributable to employer provided amounts, such amount shall be treated as a deduction allowable in computing adjusted gross income to the extent of the limitation of subparagraph (B).

(B) Limitation

For purposes of subparagraph (A), the limitation of this subparagraph is the excess of—

(i) the foreign earned income of the individual for the taxable year, over

(ii) the amount of such income excluded from gross income under subsection (a) for the taxable year.

(C) 1-year carryover of housing amounts not allowed by reason of subparagraph (B)

(i) In general

The amount not allowable as a deduction for any taxable year under subparagraph (A) by reason of the limitation of subparagraph (B) shall be treated as a deduction allowable in computing adjusted gross income for the succeeding taxable year (and only for the succeeding taxable year) to the extent of the limitation of clause (ii) for such succeeding taxable year.

(ii) Limitation

For purposes of clause (i), the limitation of this clause for any taxable year is the excess of—

(I) the limitation of subparagraph (B) for such taxable year, over

(II) amounts treated as a deduction under subparagraph (A) for such taxable year.

(D) Employer provided amounts

For purposes of this paragraph, the term ''employer provided amounts'' means any amount paid or incurred on behalf of the individual by the individual's employer which is foreign earned income included in the individual's gross income for the taxable year (without regard to this section).

(E) Foreign earned income

For purposes of this paragraph, an individual's foreign earned income for any taxable year shall be determined without regard to the limitation of subparagraph (A) of subsection (b)(2).

(d) Definitions and special rules

For purposes of this section—

(1) Qualified individual

The term ''qualified individual'' means an individual whose tax home is in a foreign country and who is—

(A) a citizen of the United States and establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or

(B) a citizen or resident of the United States and who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period.

(2) Earned income

(A) In general

The term ''earned income'' means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered.

(B) Taxpayer engaged in trade or business

In the case of a taxpayer engaged in a trade or business in which both personal

services and capital are material income-producing factors, under regulations prescribed by the Secretary, a reasonable allowance as compensation for the personal services rendered by the taxpayer, not in excess of 30 percent of his share of the net profits of such trade or business, shall be considered as earned income.

(3) Tax home

The term ''tax home'' means, with respect to any individual, such individual's home for purposes of section 162(a)(2) (relating to traveling expenses while away from home). An individual shall not be treated as having a tax home in a foreign country for any period for which his abode is within the United States.

(4) Waiver of period of stay in foreign country

Notwithstanding paragraph (1), an individual who—

(A) is a bona fide resident of, or is present in, a foreign country for any period,

(B) leaves such foreign country after August 31, 1978—

(i) during any period during which the Secretary determines, after consultation with the Secretary of State or his delegate, that individuals were required to leave such foreign country because of war, civil unrest, or similar adverse conditions in such foreign country which precluded the normal conduct of business by such individuals, and

(ii) before meeting the requirements of such paragraph (1), and

(C) establishes to the satisfaction of the Secretary that such individual could reasonably have been expected to have met such requirements but for the conditions referred to in clause (i) of subparagraph (B),

shall be treated as a qualified individual with respect to the period described in subparagraph (A) during which he was a bona fide resident of, or was present in, the foreign country, and in applying subsections (b)(2)(A), (c)(1)(B)(ii), and (c)(2)(A)(ii) with respect to such individual, only the days within such period shall be taken into account.

(5) Test of bona fide residence

If—

(A) an individual who has earned income from sources within a foreign country submits a statement to the authorities of that country that he is not a resident of that country, and

(B) such individual is held not subject as a resident of that country to the income tax of that country by its authorities with respect to such earnings,

then such individual shall not be considered a bona fide resident of that country for purposes of paragraph (1)(A).

(6) Denial of double benefits

No deduction or exclusion from gross income under this subtitle or credit against the tax imposed by this chapter (including any credit or deduction for the amount of taxes paid or accrued to a foreign country or possession of the United States) shall be allowed to the extent such deduction, exclusion, or credit is properly allocable to or chargeable against amounts excluded from gross income under subsection (a).

(7) Aggregate benefit cannot exceed foreign earned income

The sum of the amount excluded under subsection (a) and the amount deducted under subsection (c)(4)(A) for the taxable year shall not exceed the individual's foreign earned income for such year.

(8) Limitation on income earned in restricted country

(A) In general

If travel (or any transaction in connection with such travel) with respect to any foreign country is subject to the regulations described in subparagraph (B) during any period—

(i) the term ''foreign earned income'' shall not include any income from sources within such country attributable to services performed during such period,

(ii) the term ''housing expenses'' shall not include any expenses allocable to such period for housing in such country or for housing of the spouse or dependents of the taxpayer in another country while the taxpayer is present in such country, and

(iii) an individual shall not be treated as a bona fide resident of, or as present in, a foreign country for any day during which such individual was present in such country during such period.

(B) Regulations

For purposes of this paragraph, regulations are described in this subparagraph if such regulations—

(i) have been adopted pursuant to the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.), or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), and

(ii) include provisions generally prohibiting citizens and residents of the United States from engaging in transactions related to travel to, from, or within a foreign country.

(C) Exception

Subparagraph (A) shall not apply to any individual during any period in which such individual's activities are not in violation of the regulations described in subparagraph (B).

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing rules—

(A) for cases where a husband and wife each have earned income from sources outside the United States, and

(B) for married individuals filing separate returns.

(e) Election

(1) In general

An election under subsection (a) shall apply to the taxable year for which made and to all

subsequent taxable years unless revoked under paragraph (2).

(2) Revocation

A taxpayer may revoke an election made under paragraph (1) for any taxable year after the taxable year for which such election was made. Except with the consent of the Secretary, any taxpayer who makes such a revocation for any taxable year may not make another election under this section for any subsequent taxable year before the 6th taxable year after the taxable year for which such revocation was made.

(f) Determination of tax liability

(1) In general

If, for any taxable year, any amount is excluded from gross income of a taxpayer under subsection (a), then, notwithstanding sections 1 and 55—

(A) if such taxpayer has taxable income for such taxable year, the tax imposed by section 1 for such taxable year shall be equal to the excess (if any) of—

(i) the tax which would be imposed by section 1 for such taxable year if the taxpayer's taxable income were increased by the amount excluded under subsection (a) for such taxable year, over

(ii) the tax which would be imposed by section 1 for such taxable year if the taxpayer's taxable income were equal to the amount excluded under subsection (a) for such taxable year, and

(B) if such taxpayer has a taxable excess (as defined in section 55(b)(1)(A)(ii)) for such taxable year, the amount determined under the first sentence of section 55(b)(1)(A)(i) for such taxable year shall be equal to the excess (if any) of—

(i) the amount which would be determined under such sentence for such taxable year (subject to the limitation of section 55(b)(3)) if the taxpayer's taxable excess (as so defined) were increased by the amount excluded under subsection (a) for such taxable year, over

(ii) the amount which would be determined under such sentence for such taxable year if the taxpayer's taxable excess (as so defined) were equal to the amount excluded under subsection (a) for such taxable year.

(2) Special rules

(A) Regular tax

In applying section 1(h) for purposes of determining the tax under paragraph (1)(A)(i) for any taxable year in which, without regard to this subsection, the taxpayer's net capital gain exceeds taxable income (hereafter in this subparagraph referred to as the capital gain excess)—

(i) the taxpayer's net capital gain (determined without regard to section 1(h)(11)) shall be reduced (but not below zero) by such capital gain excess,

(ii) the taxpayer's qualified dividend income shall be reduced by so much of such capital gain excess as exceeds the taxpayer's net capital gain (determined without regard to section 1(h)(11) and the reduction under clause (i)), and

(iii) adjusted net capital gain, unrecaptured section 1250 gain, and 28-percent rate gain shall each be determined after increasing the amount described in section 1(h)(4)(B) by such capital gain excess.

(B) Alternative minimum tax

In applying section 55(b)(3) for purposes of determining the tax under paragraph (1)(B)(i) for any taxable year in which, without regard to this subsection, the taxpayer's net capital gain exceeds the taxable excess (as defined in section 55(b)(1)(A)(ii))—

(i) the rules of subparagraph (A) shall apply, except that such subparagraph shall be applied by substituting ''the taxable excess (as defined in section 55(b)(1)(A)(ii))'' for ''taxable income'', and

(ii) the reference in section 55(b)(3)(B) to the excess described in section 1(h)(1)(B) shall be treated as a reference to such excess as determined under the rules of subparagraph (A) for purposes of determining the tax under paragraph (1)(A)(i).

(C) Definitions

Terms used in this paragraph which are also used in section 1(h) shall have the respective meanings given such terms by section 1(h), except that in applying subparagraph (B) the adjustments under part VI of subchapter A shall be taken into account.

(g) Cross references

For administrative and penal provisions relating to the exclusions provided for in this section, see sections 6001, 6011, 6012(c), and the other provisions of subtitle F.

(Aug. 16, 1954, ch. 736, 68A Stat. 289; Pub. L. 85–866, title I, § 72(b), Sept. 2, 1958, 72 Stat. 1660; Pub. L. 87–834, § 11(a), Oct. 16, 1962, 76 Stat. 1003; Pub. L. 88–272, title II, § 237(a), Feb. 26, 1964, 78 Stat. 128; Pub. L. 89–809, title I, § 105(e)(3), Nov. 13, 1966, 80 Stat. 1567; Pub. L. 94–455, title X, § 1011(a), (b), title XIX, §§ 1901(a)(115), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1610, 1784, 1834; Pub. L. 95–30, title I, § 102(b)(12), May 23, 1977, 91 Stat. 138; Pub. L. 95–600, title IV, § 401(b)(4), title VII, §§ 701(u)(10)(A), 703(e), Nov. 6, 1978, 92 Stat. 2867, 2917, 2939; Pub. L. 95–615, title II, § 202(a)–(e), (g)(1), formerly § 202(a)–(f)(1), Nov. 8, 1978, 92 Stat. 3098–3100, renumbered § 202(a)–(e), (g)(1), and amended Pub. L. 96–222, title I, §§ 107(a)(3)(B), 108(a)(1)(A), (C), (D), Apr. 1, 1980, 94 Stat. 223, 224; Pub. L. 96–595, § 4(a)–(c)(1), Dec. 24, 1980, 94 Stat. 3466, 3467; Pub. L. 97–34, title I, § 111(a), Aug. 13, 1981, 95 Stat. 190; Pub. L. 97–448, title I, § 101(c), Jan. 12, 1983, 96 Stat. 2366; Pub. L. 98–369, div. A, title I, § 17, July 18, 1984, 98 Stat. 505; Pub. L. 99–514, title XII, § 1233(a), (b), Oct. 22, 1986, 100 Stat. 2564; Pub. L. 105–34, title XI, § 1172(a), Aug. 5, 1997, 111 Stat. 988; Pub. L. 109–222, title V, § 515(a)–(c), May 17, 2006, 120 Stat. 367; Pub. L. 110–172, § 4(c), Dec. 29, 2007, 121 Stat. 2476.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The Trading With the Enemy Act, referred to in subsec. (d)(8)(B)(i), is act Oct. 6, 1917, ch. 106, 40 Stat. 411, as amended, which is classified to sections 1 to 6, 7 to 39, and 41 to 44 of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see Tables.

The International Emergency Economic Powers Act, referred to in subsec. (d)(8)(B)(i), is Pub. L. 95–223, title II, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§1701 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 50 and Tables.

AMENDMENTS

2007—Subsec. (f). Pub. L. 110–172 amended heading and text generally, substituting provisions relating to determination of tax liability, special rules for determining regular tax and alternative minimum tax, and definitions for former provisions relating to determination of tax liability and tentative minimum tax.

2006—Subsec. (b)(2)(D)(ii). Pub. L. 109–222, §515(a)(1), substituted ''2005'' for ''2007'' in introductory provisions.

Subsec. (b)(2)(D)(ii)(II). Pub. L. 109–222, §515(a)(2), substituted ''2004'' for ''2006''.

Subsec. (c)(1)(A). Pub. L. 109–222, §515(b)(2)(A), inserted ''to the extent such expenses do not exceed the amount determined under paragraph (2)'' after ''the taxable year''.

Subsec. (c)(1)(B)(i). Pub. L. 109–222, §515(b)(1), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''16 percent of the salary (computed on a daily basis) of an employee of the United States who is compensated at a rate equal to the annual rate paid for step 1 of grade GS–14, multiplied by''.

Subsec. (c)(2) to (4). Pub. L. 109–222, §515(b)(2)(B), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (d)(4). Pub. L. 109–222, §515(b)(2)(C)(i), substituted '', (c)(1)(B)(ii), and (c)(2)(A)(ii)'' for ''and (c)(1)(B)(ii)'' in concluding provisions.

Subsec. (d)(7). Pub. L. 109–222, §515(b)(2)(C)(ii), which directed substitution of ''subsection (c)(4)'' for ''subsection (c)(3)'', was executed by substituting ''subsection (c)(4)(A)'' for ''subsection (c)(3)(A)'' to reflect the probable intent of Congress.

Subsecs. (f), (g). Pub. L. 109–222, §515(c), added subsec. (f) and redesignated former subsec. (f) as (g).

1997—Subsec. (b)(2)(A). Pub. L. 105–34, §1172(a)(1), substituted ''equal to the exclusion amount for the calendar year in which such taxable year begins'' for ''of $70,000''.

Subsec. (b)(2)(D). Pub. L. 105–34, §1172(a)(2), added subpar. (D).

1986—Subsec. (b)(2)(A). Pub. L. 99–514, §1233(a), in amending subpar. (A) generally, substituted ''an annual rate of $70,000'' for ''the annual rate set forth in the following table for each day of the taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1):

''In the case of taxable years beginning in:	**The annual rate is:**
1983, 1984, 1985, 1986, or 1987	$80,000
1988	85,000
1989	90,000
1990 and thereafter	95,000.''

Subsec. (d)(8), (9). Pub. L. 99–514, §1233(b), added par. (8) and redesignated former par. (8) as (9).

1984—Subsec. (b)(2)(A). Pub. L. 98–369 amended table by striking out item which set the annual rate at $75,000 for taxable years beginning in 1982, substituted item setting the annual rate at $80,000 for taxable years beginning in 1983, 1984, 1985, 1986, or 1987 for items which had set annual rates of $80,000 for taxable years beginning in 1983, $85,000 for taxable years beginning in 1984, $90,000 for taxable years beginning in 1985, and $95,000 for taxable years beginning in 1986 and thereafter, and added items setting annual rates of $85,000 for taxable years beginning in 1988, $90,000 for taxable years beginning in 1989, and $95,000 for taxable years beginning in 1990 and thereafter.

1983—Subsec. (c)(3)(B)(ii). Pub. L. 97–448, §101(c)(2), substituted ''subsection (a)'' for ''subsection (a)(1)''.

Subsec. (d)(7), (8). Pub. L. 97–448, §101(c)(1), added par. (7) and redesignated former par. (7) as (8).

1981—Pub. L. 97–34 amended section generally, modifying the eligibility standards of existing law, replacing the existing system of deduction for excess living costs with an exclusion of a portion of foreign earned income, and providing for an individual's election to exclude a portion of his income or to deduct an amount for housing, based on his housing expenses.

1980—Pub. L. 96–595 §4(c)(1), inserted ''or from charitable services'' after ''camps'' in section catchline.

Subsec. (a). Pub. L. 96–595, §4(a), inserted ''or who performs qualified charitable services in a lesser developed country,'' after ''hardship area''.

Pub. L. 96–222, §108(a)(1)(C), (D), substituted ''a foreign country or'' for ''qualified foreign'' in par. (2) and, in provisions following par. (2), substituted ''his gross income any deduction,'' for ''his gross income'' and ''other than the deduction allowed by section 217'' for ''other than the deductions allowed by sections 217''.

Subsec. (c)(1)(A). Pub. L. 96–595, §4(b)(1), substituted ''Dollar limitations'' for ''In general'' in heading, redesignated existing provisions as cl. (i), and in cl. (i) as so redesignated, inserted ''Camp residents—In the case of an individual who resides in a camp located in a hardship area'' before ''the amount excluded'', and added cls. (ii) and (iii).

Subsec. (c)(1)(D), (E). Pub. L. 96–595, §4(b)(2), added subpars. (D) and (E).

1978—Pub. L. 95–615, §202(f)(1), substituted ''Income earned by individuals in certain camps'' for ''Earned income from sources without the United States'' in section catchline.

Subsec. (a). Pub. L. 95–615, §202(a), in introductory provisions inserted reference to an individual described in section 913(a) who, because of his employment, resides in a camp located in a hardship area, in par. (1) substituted reference to amounts received from sources within a foreign country or countries for reference to amounts received from sources without the United States, in par. (2) substituted reference to amounts received from sources within qualified foreign countries for reference to amounts received from sources without the United States, and in provisions following par. (2) struck out ''any deductions (other than those allowed by section 151, relating to personal exemptions),'' after ''deduction from his gross income'' and inserted '', other than the deductions allowed by sections 217 (relating to moving expenses)'' after ''subsection''.

Pub. L. 95–600, §701(u)(10)(A), inserted provisions setting forth formula for determining amount of reduction of taxes, and struck out provisions relating to the credit against taxes.

Subsec. (c)(1)(A). Pub. L. 95–615, §202(b), substituted ''The amount excluded'' for ''Except as provided in subparagraphs (B) and (C), the amount excluded'' and ''an annual rate of $20,000 for days during which he resides in a camp'' for ''an annual rate of $15,000''.

Subsec. (c)(1)(B). Pub. L. 95–615, §202(b), substituted provisions relating to conditions upon which an individual will be considered to reside in a camp because of his employment for provisions which related to the amount excluded from the gross income of an individual performing qualified charitable services.

Subsec. (c)(1)(C). Pub. L. 95–615, §202(b), substituted provisions relating to definition of ''hardship area'' for provisions which related to the amount excluded from the gross income of an individual performing both qualified charitable services and other services.

Subsec. (c)(1)(D). Pub. L. 95–615, §202(b), struck out subpar. (D) which defined ''qualified charitable services''.

Subsec. (c)(7). Pub. L. 95–615, §202(c), added par. (7).

Pub. L. 95–600, § 703(e), redesignated former par. (8) as (7). Such par. (8) was subsequently repealed by section 202(e) of Pub. L. 95–615 without taking into account the redesignation of par. (8) as (7) by Pub. L. 95–600. See 1978 Amendment note for subsec. (c)(8) below.

Subsec. (c)(8). Pub. L. 95–615, § 202(e), struck out par. (8) which related to the nonexclusion under subsec. (a) of any amount attributable to services performed in a foreign country or countries if such amount was received outside of the foreign country or countries where such services were performed and if one of the purposes was the avoidance of any tax imposed by such foreign country or countries on such amount.

Subsec. (d). Pub. L. 95–615, § 202(d)(1), redesignated subsec. (e) as (d), inserted ''for the taxable year'' after ''section apply'', and struck out provision that an election was applicable to the taxable year for which made and to all subsequent taxable years. Former subsec. (d), which related to the computation of tax imposed by section 1 or section 1201 if an individual earned income which was excluded from gross income under subsec. (a) and which defined ''net taxable income'' and ''net excluded earned income'', was struck out.

Subsec. (d)(1). Pub. L. 95–600, § 401(b)(4), struck out provisions respecting applicability of section 1201 of this title.

Subsecs. (e), (f). Pub. L. 95–615, § 202(d)(1), (2), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

1977—Subsec. (d)(1)(B). Pub. L. 95–30 substituted ''on the sum of (i) the amount of net excluded earned income, and (ii) the zero bracket amount'' for ''on the amount of net excluded earned income''.

1976—Subsec. (a). Pub. L. 94–455, §§ 1011(b)(1), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in par. (1), and in provisions following par. (2), inserted ''or as a credit against the tax imposed by this chapter any credit for the amount of taxes paid or accrued to a foreign country or possession of the United States, to the extent that such deductions or credit is'' after ''personal exemptions)''.

Subsec. (b). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(1). Pub. L. 94–455, § 1011(a), reduced the amount excludable from individual's gross income from $20,000 to $15,000 and $20,000 for employees of charitable organizations, added special rule to be applied to income from charitable sources and other sources combined, inserted definition of ''qualified charitable services'', and struck out provisions relating to $25,000 exclusion for individual who has been a bona fide resident in a foreign country for an uninterrupted period of 3 years.

Subsec. (c)(7). Pub. L. 94–455, § 1901(a)(115), struck out par. (7) relating to certain noncash remuneration from sources outside the United States.

Subsec. (c)(8). Pub. L. 94–455, § 1011(b)(2), added par. (8).

Subsecs. (d) to (f). Pub. L. 94–455, § 1011(b)(3), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

1966—Subsec. (d). Pub. L. 89–809 designated existing text as par. (1) and added par. (2).

1964—Subsec. (c)(1)(B). Pub. L. 88–272 substituted ''$25,000'' for ''$35,000''.

1962—Subsec. (a). Pub. L. 87–834 substituted ''which constitute earned income attributable to services performed during such uninterrupted period'' for ''if such amounts constitute earned income (as defined in subsection (b)) attributable to such period'' in par. (1), and ''which constitute earned income attributable to services performed during such 18-month period'' for ''if such amounts constitute earned income (as defined in subsection (b)) attributable to such period'' in par. (2), inserted provisions in pars. (1) and (2) requiring the amount excluded under such paragraphs to be computed by applying the special rules contained in subsec. (c), and eliminated provisions from par. (2) which limited the amount excluded under such paragraph to not more than $20,000 if the 18-month period includes the entire taxable year, and to not more than an amount which bears the same ratio to $20,000 as the number of days in the part of the taxable year within the 18-month period bears to the total number of days in such year if the 18-month period does not include the entire taxable year.

Subsecs. (c) and (d). Pub. L. 87–834 added subsec. (c) and redesignated former subsec. (c) as (d).

1958—Subsec. (c). Pub. L. 85–866 added subsec. (c).

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. 109–222, to which such amendment relates, with certain exceptions, see section 4(d) of Pub. L. 110–172, set out as a note under section 355 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–222, title V, § 515(d), May 17, 2006, 120 Stat. 368, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1172(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1233(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 115 of subtitle B (§§ 111–115) of title I of Pub. L. 97–34 provided that: ''The amendments made by this subtitle [amending this section and sections 37, 43, 62, 63, 105, 119, 410, 879, 1034, 1302, 1303, 1304, 1402, 3401, 6012, and 6091 of this title and repealing section 913 of this title] (other than section 114 [amending section 208 of Pub. L. 95–615, set out below]) shall apply with respect to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 4(d) of Pub. L. 96–595 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1978.''

Amendment by section 107(a)(3)(B) of Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

Amendment by section 108(a)(1)(A), (C), (D) of Pub. L. 96–222 effective as if included in the Foreign Earned Income Act of 1978, Pub. L. 95–615, see section 108(a)(2)(A) of Pub. L. 96–222, set out as a note under section 3 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 401(b)(4) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978,

see section 401(c) of Pub. L. 95–600, set out as a note under section 1201 of this title.

Section 701(u)(10)(B) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, §107(a)(1)(B), Apr. 1, 1980, 94 Stat. 222, provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning in calendar year 1978 but only in the case of taxpayers who make an election under section 209(c) of the Foreign Earned Income Act of 1978 [section 209(c) of Pub. L. 95–615, set out below].''

Amendment by section 703(e) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Section 209 of Pub. L. 95–615 provided that:

''(a) GENERAL RULE.—Except as provided in subsections (b) and (c), the amendments made by this title [see section 201(a) of Pub. L. 95–615, set out as a Short Title of 1978 Amendment note under section 1 of this title] shall apply to taxable years beginning after December 31, 1977.

''(b) WAGE WITHHOLDING.—The amendment made by section 207(a) [amending section 3401 of this title] shall apply to remuneration paid after the date of the enactment of this Act. [Nov. 8, 1978].

''(c) ELECTION OF PRIOR LAW.—

''(1) A taxpayer may elect not to have the amendments made by this title [see section 201(a) of Pub. L. 95–615, set out as a Short Title of 1978 Amendment note under section 1 of this title] apply with respect to any taxable year beginning after December 31, 1977, and before January 1, 1979.

''(2) An election under this subsection shall be filed with a taxpayer's timely filed return for the first taxable year beginning after December 31, 1977.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1011(d) of Pub. L. 94–455, as amended by Pub. L. 95–30, title III, §302, May 23, 1977, 91 Stat. 152; Pub. L. 95–615, §4(a), Nov. 8, 1978, 92 Stat. 3097, provided that: ''The amendments made by this section [amending this section and section 36 of this title] shall apply to taxable years beginning after December 31, 1977.''

Amendment by section 1901(a)(115) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 237(b) of Pub. L. 88–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1964.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 11(c)(1) of Pub. L. 87–834 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after September 4, 1962, but only with respect to amounts—

''(A) received after March 12, 1962, which are attributable to services performed after December 31, 1962, or

''(B) received after December 31, 1962, which are attributable to services performed on or before December 31, 1962, unless on March 12, 1962, there existed a right (whether forfeitable or nonforfeitable) to receive such amounts.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1957, see section 72(c) of Pub. L. 85–866 set out as a note under section 6012 of this title.

REPEALS

Section 703(e) of Pub. L. 95–600, cited as a credit to this section, was repealed by Pub. L. 96–222, title I, §107(a)(3)(B), Apr. 1, 1980, 94 Stat. 223. See 1978 Amendment note for subsec. (c)(7) of this section set out above.

TREATMENT OF CERTAIN PERSONS IN PANAMA

Section 1232(a) of Pub. L. 99–514 provided that: ''Nothing in the Panama Canal Treaty (or in any agreement implementing such Treaty) shall be construed as exempting (in whole or in part) any citizen or resident of the United States from any tax under the Internal Revenue Code of 1954 or 1986. The preceding sentence shall apply to all taxable years whether beginning before, on, or after the date of the enactment of this Act [Oct. 22, 1986] (or in the case of any tax not imposed with respect to a taxable year, to taxable events after the date of enactment of this Act.)''

TAXABLE YEARS BEGINNING IN 1977 OR 1978; INDIVIDUALS WHO LEAVE FOREIGN COUNTRY AFTER AUGUST 31, 1978

Rules similar to the rules of section 913(j)(4) of this title to apply for the purposes of applying this section for taxable years beginning in 1977 or 1978 in the case of an individual who leaves a foreign country after Aug. 31, 1978, see section 1(b) of Pub. L. 96–608, set out as an Effective Date of 1980 Amendment note under section 913 of this title.

INDIVIDUALS FOR WHOM UNUSED ZERO BRACKET AMOUNT COMPUTATION IS PROVIDED FOR TAXABLE YEARS BEGINNING IN 1977

Section 4(b) of Pub. L. 95–615, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''If for any taxable year beginning in 1977—

''(1) an individual is entitled to the benefits of section 911 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and

''(2) such individual chooses to take to any extent the benefits of section 901 of such Code,

then such individual shall be treated for such taxable year as an individual for whom an unused zero bracket amount computation is provided by section 63(e) of such Code.''

REPORTS TO CONGRESSIONAL COMMITTEES; INFORMATION FROM FEDERAL AGENCIES

Section 208 of Pub. L. 95–615, as amended by Pub. L. 97–34, title I, §114, Aug. 13, 1981, 95 Stat. 195; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 101–508, title XI, §11833, Nov. 5, 1990, 104 Stat. 1388–560, provided that:

''(a) GENERAL RULE.—As soon as practicable after December 31, 1993, and as soon as practicable after the close of each fifth calendar year thereafter, the Secretary of the Treasury shall transmit a report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate on the operation and effects of sections 911 and 912 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].

''(b) INFORMATION FROM FEDERAL AGENCIES.—Each agency of the Federal Government which pays allowances excludable from gross income under section 912 of such Code shall keep such records and furnish to the Secretary of the Treasury such information as he determines to be necessary to carry out his responsibility under subsection (a).''

§912. Exemption for certain allowances

The following items shall not be included in gross income, and shall be exempt from taxation under this subtitle:

(1) Foreign areas allowances

In the case of civilian officers and employees of the Government of the United States, amounts received as allowances or otherwise (but not amounts received as post differentials) under—

(A) chapter 9 of title I of the Foreign Service Act of 1980,

(B) section 4 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C., sec. 403e),

(C) title II of the Overseas Differentials and Allowances Act, or

(D) subsection (e) or (f) of the first section of the Administrative Expenses Act of 1946, as amended, or section 22 of such Act.

(2) Cost-of-living allowances

In the case of civilian officers or employees of the Government of the United States stationed outside the continental United States (other than Alaska), amounts (other than amounts received under title II of the Overseas Differentials and Allowances Act) received as cost-of-living allowances in accordance with regulations approved by the President (or in the case of judicial officers or employees of the United States, in accordance with rules similar to such regulations).

(3) Peace Corps allowances

In the case of an individual who is a volunteer or volunteer leader within the meaning of the Peace Corps Act and members of his family, amounts received as allowances under section 5 or 6 of the Peace Corps Act other than amounts received as—

(A) termination payments under section 5(c) or section 6(1) of such Act,

(B) leave allowances,

(C) if such individual is a volunteer leader training in the United States, allowances to members of his family, and

(D) such portion of living allowances as the President may determine under the Peace Corps Act as constituting basic compensation.

(Aug. 16, 1954, ch. 736, 68A Stat. 290; Pub. L. 86–707, title V, § 523(a), Sept. 6, 1960, 74 Stat. 802; Pub. L. 87–293, title II, § 201(a), Sept. 22, 1961, 75 Stat. 625; Pub. L. 96–465, title II, § 2206(e)(3), Oct. 17, 1980, 94 Stat. 2163; Pub. L. 100–647, title VI, § 6137(a), Nov. 10, 1988, 102 Stat. 3723.)

REFERENCES IN TEXT

The Foreign Service Act of 1980, referred to in par. (1)(A), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended. Chapter 9 of title I of the Foreign Service Act of 1980 is classified generally to subchapter IX (§ 4081 et seq.) of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

Title II of the Overseas Differentials and Allowances Act, referred to in pars. (1)(C) and (2), was title II of Pub. L. 86–707, Sept. 6, 1960, 74 Stat. 793, which was repealed and reenacted as sections 5922 to 5925 of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

Sections 1(e) and (f) and 22 of the Administrative Expenses Act of 1946, referred to in par. (1)(D), were repealed and the provisions thereof reenacted as sections 5726(b), 5727(b) to (e), and 5913 of Title 5, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

The Peace Corps Act, referred to in par. (3), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. Sections 5 and 6 of that act are classified to sections 2504 and 2505 of Title 22. For complete classification of this act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

AMENDMENTS

1988—Par. (2). Pub. L. 100–647 inserted ''(or in the case of judicial officers or employees of the United States, in accordance with rules similar to such regulations)'' after ''President''.

1980—Par. (1)(A). Pub. L. 96–465 substituted reference to chapter 9 of title I of the Foreign Service Act of 1980 for reference to title IX of the Foreign Service Act of 1946.

1961—Par. (3). Pub. L. 87–293 added par. (3).

1960—Pub. L. 86–707 exempted foreign areas allowances received under section 4 of the Central Intelligence Agency Act of 1949, title II of the Overseas Differentials and Allowances Act, subsection (e) or (f) of the first section of the Administrative Expenses Act of 1946, or section 22 of such Act, provided that amounts received as post differentials shall not be exempt and in provisions relating to cost-of-living allowances excluded Alaska from term ''continental United States'' and amounts received under title II of the Overseas Differentials and Allowances Act.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6137(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to allowances received after October 12, 1987, in taxable years ending after such date.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–465 effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96–465, set out as an Effective Date note under section 3901 of Title 22, Foreign Relations and Intercourse.

EFFECTIVE DATE OF 1961 AMENDMENTS

Section 201(d) of Pub. L. 87–293 provided that: ''The amendments made by subsections (a) and (b) of this section [amending this section and section 1303 of this title] shall apply with respect to taxable years ending after March 1, 1961. The amendment made by subsection (c) [amending section 3401 of this title] shall apply with respect to remuneration paid after the date of the enactment of this Act [Sept. 22, 1961].''

[Section 201(d) of Pub. L. 87–293 was repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments contained in such provisions, see sections 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.]

EFFECTIVE DATE OF 1960 AMENDMENT

Section 523(b) of Pub. L. 86–707, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Paragraphs (1) and (2) of section 912 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a) of this section, shall apply only with respect to amounts received on or after the date of the enactment of this Act [Sept. 6, 1960] in taxable years ending on or after such date.''

REPEALS; AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 201(a) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts,

agreements, and other actions issued undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Function of determining the portion of living allowances constituting basic compensation for Peace Corps volunteers or volunteer leaders under par. (3) of this section delegated by President to Director of Peace Corps to be performed in consultation with the Secretary of the Treasury, see section 1–104 of Ex. Ord. No. 12137, May 16, 1979, 44 F.R. 29023, set out as a note under section 2501 of Title 22, Foreign Relations and Intercourse.

Authority of President under par. (2) of this section delegated to Secretary of Defense with respect to military departments, and to Secretary of Transportation with respect to Coast Guard when it is not operating as a service in the Navy, concerning civilian employees of nonappropriated fund instrumentalities of the armed forces, see section 201 of Ex. Ord. No. 11137, Jan. 7, 1964, as amended, set out as a note under section 5921 of Title 5, Government Organization and Employees.

TREATMENT OF EMPLOYEES OF PANAMA CANAL COMMISSION AND DEPARTMENT OF DEFENSE

Pub. L. 99–514, title XII, §1232(b), Oct. 22, 1986, 100 Stat. 2564, provided that: ''Employees of the Panama Canal Commission and civilian employees of the Defense Department of the United States stationed in Panama may exclude from gross income allowances which are comparable to the allowances excludable under section 912(1) of the Internal Revenue Code of 1986 by employees of the State Department of the United States stationed in Panama. The preceding sentence shall apply to taxable years beginning after December 31, 1986.''

[§913. Repealed. Pub. L. 97–34, title I, §112(a), Aug. 13, 1981, 95 Stat. 194]

Section, added Pub. L. 95–615, title II, §203(a), Nov. 8, 1978, 92 Stat. 3100; amended Pub. L. 96–222, title I, §108(a)(1)(B), (F), Apr. 1, 1980. 94 Stat. 223, 225; Pub. L. 96–608, §1(a), Dec. 28, 1980, 94 Stat. 3550, related to a deduction for certain expenses of living abroad.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97–34, set out as an Effective Date of 1981 Amendment note under section 911 of this title.

[SUBPART C—REPEALED]

[§§921 to 927. Repealed. Pub. L. 106–519, §2, Nov. 15, 2000, 114 Stat. 2423]

Section 921, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 985, provided for exclusion from gross income of exempt foreign trade income.

A prior section 921, acts Aug. 16, 1954, ch. 736, 68A Stat. 290; Oct. 4, 1976, Pub. L. 94–455, title XIX, §1901(a)(116), 90 Stat. 1784, defined Western Hemisphere trade corporation, prior to repeal by Pub. L. 94–455, title X, §1052(b), Oct. 4, 1976, 90 Stat. 1648, effective with respect to taxable years beginning after Dec. 31, 1979.

Section 922, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 986, defined FSC's.

A prior section 922, acts Aug. 16, 1954, ch. 736, 68A Stat. 291; Dec. 10, 1971, Pub. L. 92–178, title V, §502(c), 85 Stat. 550; Oct. 4, 1976, Pub. L. 94–455, title X, §1052(a), (c)(1), 90 Stat. 1647, 1648; Nov. 6, 1978, Pub. L. 95–600, title III, §301(b)(15), 92 Stat. 2822, related to a special deduction for a Western Hemisphere trade corporation, prior to repeal by Pub. L. 94–455, title X, §1052(b), Oct. 4, 1976, 90 Stat. 1648, effective with respect to taxable years beginning after Dec. 31, 1979.

Section 923, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 986; amended Pub. L. 99–514, title XVIII, §1876(b)(3), Oct. 22, 1986, 100 Stat. 2898, related to exempt foreign trade income.

Section 924, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 987; amended Pub. L. 99–514, title XVIII, §1876(e)(2), (*l*), Oct. 22, 1986, 100 Stat. 2899, 2901, related to foreign trading gross receipts.

Section 925, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 990, related to transfer pricing rules.

Section 926, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 991, related to distributions to shareholders.

Section 927, added Pub. L. 98–369, div. A, title VIII, §801(a), July 18, 1984, 98 Stat. 991; amended Pub. L. 99–514, title XVIII, §1876(a)(1), (e)(1), (f)(1), (p)(5), Oct. 22, 1986, 100 Stat. 2897, 2899, 2902; Pub. L. 100–647, title I, §1012(bb)(8)(A), Nov. 10, 1988, 102 Stat. 3536; Pub. L. 101–508, title XI, §11704(a)(10), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 103–66, title XIII, §13239(a), Aug. 10, 1993, 107 Stat. 509; Pub. L. 105–34, title XI, §1171(a), Aug. 5, 1997, 111 Stat. 987, related to other definitions and special rules.

EFFECTIVE DATE OF REPEAL

Repeal applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as an Effective Date of 2000 Amendments note under section 56 of this title.

SUBPART D—POSSESSIONS OF THE UNITED STATES

Sec.
931. Income from sources within Guam, American Samoa, or the Northern Mariana Islands.
932. Coordination of United States and Virgin Islands income taxes.
933. Income from sources within Puerto Rico.
934. Limitation on reduction in income tax liability incurred to the Virgin Islands.
[934A, 935. Repealed.]
936. Puerto Rico and possession tax credit.[1]
937. Residence and source rules involving possessions.

AMENDMENTS

2004—Pub. L. 108–357, title VIII, §908(c)(6), Oct. 22, 2004, 118 Stat. 1657, added item 937.

1986—Pub. L. 99–514, title XII, §§1272(d)(12), 1274(d), 1275(c)(8), Oct. 22, 1986, 100 Stat. 2595, 2598, 2599, substituted ''Guam, American Samoa, or the Northern Mariana Islands'' for ''possessions of the United States'' in item 931, added item 932, and struck out former item 932 ''Citizens of possessions of the United States'', item 934A ''Income tax rate on Virgin Islands source income'' and item 935 ''Coordination of United States and Guam individual income taxes''.

1983—Pub. L. 97–455, §1(d)(1), Jan. 12, 1983, 96 Stat. 2498, added item 934A.

1972—Pub. L. 92–606, §1(f)(5), Oct. 31, 1972, 86 Stat. 1497, added item 935.

1960—Pub. L. 86–779, §4(a)(2), Sept. 14, 1960, 74 Stat. 999, added item 934.

§931. Income from sources within Guam, American Samoa, or the Northern Mariana Islands

(a) General rule

In the case of an individual who is a bona fide resident of a specified possession during the entire taxable year, gross income shall not include—

[1] Editorially supplied. Section 936 added by Pub. L. 94–455 without corresponding amendment of subpart analysis.

(1) income derived from sources within any specified possession, and

(2) income effectively connected with the conduct of a trade or business by such individual within any specified possession.

(b) Deductions, etc. allocable to excluded amounts not allowable

An individual shall not be allowed—

(1) as a deduction from gross income any deductions (other than the deduction under section 151, relating to personal exemptions), or

(2) any credit,

properly allocable or chargeable against amounts excluded from gross income under this section.

(c) Specified possession

For purposes of this section, the term ''specified possession'' means Guam, American Samoa, and the Northern Mariana Islands.

(d) Employees of the United States

Amounts paid for services performed as an employee of the United States (or any agency thereof) shall be treated as not described in paragraph (1) or (2) of subsection (a).

(Aug. 16, 1954, ch. 736, 68A Stat. 291; Pub. L. 89–809, title I, § 107(a), Nov. 13, 1966, 80 Stat. 1571; Pub. L. 92–178, title V, § 502(d), Dec. 10, 1971, 85 Stat. 550; Pub. L. 92–606, § 1(f)(1), Oct. 31, 1972, 86 Stat. 1497; Pub. L. 94–455, title X, § 1051(c), title XIX, §§ 1901(a)(117), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1645, 1784, 1834; Pub. L. 95–30, title I, § 101(d)(12), May 23, 1977, 91 Stat. 134; Pub. L. 98–369, div. A, title VII, § 711(c)(2)(A)(iv), July 18, 1984, 98 Stat. 945; Pub. L. 99–514, title XII, § 1272(a), Oct. 22, 1986, 100 Stat. 2593; Pub. L. 108–357, title VIII, § 908(c)(1), Oct. 22, 2004, 118 Stat. 1656.)

AMENDMENTS

2004—Subsec. (d). Pub. L. 108–357 amended heading and text of subsec. (d) generally, substituting provisions relating to employees of the United States for provisions consisting of pars. (1) to (3) relating to special rules concerning employees of the United States, determination of source of income, and determination of residency.

1986—Pub. L. 99–514 amended section generally, substituting provisions relating to income from sources within Guam, American Samoa, or the Northern Mariana Islands, for former provisions relating to income from sources within possessions of the United States, which had declared in: subsec. (a), general rule as to gross income, including requirements relating to 3-year period and trade or business; subsec. (b), rule as to amounts received in United States; subsec. (c), definition of ''possession of the United States''; subsec. (d), general rule allowing deductions only to extent connected with income from sources within United States, and specific exceptions to limitations of general rule; subsec. (e), deduction for personal exemption; subsec. (f), allowance of deductions and credits; subsec. (g), foreign tax credit; subsec. (h), provisions relating to employees of United States.

1984—Subsec. (d)(2)(B). Pub. L. 98–369 substituted ''for losses'' for '', for losses of property not connected with the trade or business if arising from certain casualties or theft,''.

1977—Subsec. (d)(3). Pub. L. 95–30 struck out par. (3) which made a cross reference to section 142(b)(2) for disallowance of the standard deduction.

1976—Subsec. (a). Pub. L. 94–455, § 1051(c)(1), struck out all references to domestic corporations and made subsection applicable only to individual citizens.

Subsec. (c). Pub. L. 94–455, § 1051(c)(2), substituted ''Commonwealth of Puerto Rico, the Virgin Islands of the United States, or Guam'' for ''Virgin Islands of the United States, and such term when used with respect to citizens of the United States does not include Puerto Rico or Guam'' after ''does not include the''.

Subsec. (d)(1). Pub. L. 94–455, §§ 1051(c)(3), 1906(b)(13)(A), substituted ''a citizen of the United States'' for ''persons'' after ''in the case of'' and struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, §§ 1051(c)(3), 1906(b)(13)(A), substituted ''A citizen of the United States'' for ''Persons'' after ''Allowance of deductions and credits'' and struck out in two places ''or his delegate'' after ''Secretary''.

Subsecs. (h), (i). Pub. L. 94–455, § 1901(a)(117), redesignated subsec. (i) as (h). Former subsec. (h), relating to the status of a citizen of the United States who has been interned by the enemy, was struck out.

1972—Subsec. (c). Pub. L. 92–606 substituted ''Puerto Rico or Guam'' for ''Puerto Rico''.

1971—Subsec. (a). Pub. L. 92–178 provided for non-application of section in the case of a corporation for a taxable year for which it is a DISC or in which it owns at any time stock in a DISC or former DISC.

1966—Subsec (d). Pub. L. 89–809 made applicable to United States citizens and domestic corporations engaged in trade or business in possessions, who qualify for the special tax treatment of income qualifying for the exclusion relating to income from United States possessions, provisions which allow deductions to nonresident aliens or foreign corporations engaged in trade or business in the United States by allowing deductions only where they are allocable to income effectively connected with the trade or business in the United States and by spelling out the exceptions allowing deductions whether or not connected with income from sources within the United States in the case of losses not connected with the trade or business but incurred in transactions entered into for profit, casualty losses, and charitable contributions.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 908(d)(1) of Pub. L. 108–357, set out as an Effective Date note under section 937 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1277 of subtitle G (§§ 1271–1277) of title XII of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1012(z), Nov. 10, 1988, 102 Stat. 3530, provided that:

''(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this subtitle [enacting section 932 of this title, amending this section and sections 28, 32, 48, 63, 153, 246, 338, 864, 876, 881, 933, 934, 936, 957, 1402, 1442, 3401, 6091, 7651, 7654, and 7655 of this title, repealing sections 932, 934A, and 935 of this title, and enacting provisions set out as notes under this section and section 932 of this title] shall apply to taxable years beginning after December 31, 1986.

''(b) SPECIAL RULE FOR GUAM, AMERICAN SAMOA, AND THE NORTHERN MARIANA ISLANDS.—The amendments made by this subtitle shall apply with respect to Guam, American Samoa, or the Northern Mariana Islands (and to residents thereof and corporations created or organized therein) only if (and so long as) an implementing agreement under section 1271 [set out below] is in effect between the United States and such possession.

''(c) SPECIAL RULES FOR THE VIRGIN ISLANDS.—

''(1) IN GENERAL.—The amendments made by section 1275(c) [amending sections 28, 48, 338, 864, and 934 of this title and repealing section 934A of this title] shall apply with respect to the Virgin Islands (and residents thereof and corporations created or organized therein) only if (and so long as) an implementing agreement is in effect between the United States and the Virgin Islands with respect to the establishment of rules under which the evasion or avoidance of

United States income tax shall not be permitted or facilitated by such possession. Any such implementing agreement shall be executed on behalf of the United States by the Secretary of the Treasury, after consultation with the Secretary of the Interior.

''(2) SECTION 1275(b).—

''(A) IN GENERAL.—The amendment made by section 1275(b) [amending section 7651 of this title] shall apply with respect to—

''(i) any taxable year beginning after December 31, 1986, and

''(ii) any pre-1987 open year.

''(B) SPECIAL RULES.—In the case of any pre-1987 open year—

''(i) the amendment made by section 1275(b) shall not apply to income from sources in the Virgin Islands or income effectively connected with the conduct of a trade or business in the Virgin Islands, and

''(ii) the taxpayer shall be allowed a credit—

''(I) against any additional tax imposed by subtitle A of the Internal Revenue Code of 1954 [now 1986] (by reason of the amendment made by section 1275(b)) on income not described in clause (i),

''(II) for any tax paid to the Virgin Islands before the date of the enactment of this Act [Oct. 22, 1986] and attributable to such income.

For purposes of clause (ii)(II), any tax paid before January 1, 1987, pursuant to a process in effect before August 16, 1986, shall be treated as paid before the date of the enactment of this Act.

''(C) PRE-1987 OPEN YEAR.—For purposes of this paragraph, the term 'pre-1987 open year' means any taxable year beginning before January 1, 1987, if on the date of the enactment of this Act [Oct. 22, 1986] the assessment of a deficiency of income tax for such taxable year is not barred by any law or rule of law.

''(D) EXCEPTION.—In the case of any pre-1987 open year, the amendment made by section 1275(b) shall not apply to any domestic corporation if—

''(i) during the fiscal year which ended May 31, 1986, such corporation was actively engaged directly or through a subsidiary in the conduct of a trade or business in the Virgin Islands and such trade or business consists of business related to marine activities, and

''(ii) such corporation was incorporated on March 31, 1983, in Delaware.

''(E) EXCEPTION FOR CERTAIN TRANSACTIONS.—

''(i) IN GENERAL.—In the case of any pre-1987 open year, the amendment made by section 1275(b) shall not apply to any income derived from transactions described in clause (ii) by 1 or more corporations which were formed in Delaware on or about March 6, 1981, and which have owned 1 or more office buildings in St. Thomas, United States Virgin Islands, for at least 5 years before the date of the enactment of this Act [Oct. 22, 1986].

''(ii) DESCRIPTION OF TRANSACTIONS.—The transactions described in this clause are—

''(I) the redemptions of limited partnership interests for cash and property described in an agreement (as amended) dated March 12, 1981,

''(II) the subsequent disposition of the properties distributed in such redemptions, and

''(III) interest earned before January 1, 1987, on bank deposits of proceeds received from such redemptions to the extent such deposits are located in the United States Virgin Islands.

''(iii) LIMITATION.—The aggregate reduction in tax by reason of this subparagraph shall not exceed $8,312,000. If the taxes which would be payable as the result of the application of the amendment made by section 1275(b) to pre-1987 open years exceeds the limitation of the preceding sentence, such excess shall be treated as attributable to income received in taxable years in reverse chronological order.

''(d) REPORT ON IMPLEMENTING AGREEMENTS.—If, during the 1-year period beginning on the date of the enactment of this Act [Oct. 22, 1986], any implementing agreement described in subsection (b) or (c) is not executed, the Secretary of the Treasury or his delegate shall report to the Committee on Finance of the United States Senate, the Committee on Ways and Means, and the Committee on Interior and Insular Affairs [now Committee on Natural Resources] of the House of Representatives with respect to—

''(1) the status of such negotiations, and

''(2) the reason why such agreement has not been executed.

''(e) TREATMENT OF CERTAIN UNITED STATES PERSONS.—Except as otherwise provided in regulations prescribed by the Secretary of the Treasury or his delegate, if a United States person becomes a resident of Guam, American Samoa, or the Northern Mariana Islands, the rules of section 877(c) of the Internal Revenue Code of 1954 [now 1986] shall apply to such person during the 10-year period beginning when such person became such a resident. Notwithstanding subsection (b), the preceding sentence shall apply to dispositions after December 31, 1985, in taxable years ending after such date.

''(f) EXEMPTION FROM WITHHOLDING.—Notwithstanding subsection (b), the modification of section 884 of the Internal Revenue Code of 1986 by reason of the amendment to section 881 of such Code by section 1273(b)(1) of this Act shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 711(c)(2)(A)(v) of Pub. L. 98–369, set out as a note under section 165 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1051(c) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1975, with certain exceptions, see section 1051(i) of Pub. L. 94–455, set out as a note under section 27 of this title.

Amendment by section 1901(a)(117) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 2 of Pub. L. 92–606 provided in part that: ''The amendments made by section 1 [enacting sections 935 and 6688 of this title, amending this section, sections 932, 7654, and 7701 of this title, and section 1421i of Title 48, Territories and Insular Possessions, and enacting provisions set out as notes under sections 881 and 1442 of this title] (other than section 1(e)) [amending sections 881 and 1442 of this title] shall apply with respect to taxable years beginning after December 31, 1972.''

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 107(b) of Pub. L. 89–809 provided that: ''The amendment made by this section [amending this section] shall apply with respect to taxable years beginning after December 31, 1966.''

AUTHORITY OF GUAM, AMERICAN SAMOA, AND THE NORTHERN MARIANA ISLANDS TO ENACT REVENUE LAWS

Section 1271 of Pub. L. 99–514 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), nothing in the laws of the United States shall prevent Guam, American Samoa, or the Northern Mariana Islands from enacting tax laws (which shall apply in lieu of the mirror system) with respect to income—

''(1) from sources within, or effectively connected with the conduct of a trade or business within, any such possession, or

''(2) received or accrued by any resident of such possession.

''(b) AGREEMENTS TO ALLEVIATE CERTAIN PROBLEMS RELATING TO TAX ADMINISTRATION.—Subsection (a) shall apply to Guam, American Samoa, or the Northern Mariana Islands only if (and so long as) an implementing agreement is in effect between the United States and such possession with respect to—

''(1) the elimination of double taxation involving taxation by such possession and taxation by the United States,

''(2) the establishment of rules under which the evasion or avoidance of United States income tax shall not be permitted or facilitated by such possession,

''(3) the exchange of information between such possession and the United States for purposes of tax administration, and

''(4) the resolution of other problems arising in connection with the administration of the tax laws of such possession or the United States.

Any such implementing agreement shall be executed on behalf of the United States by the Secretary of the Treasury after consultation with the Secretary of the Interior.

''(c) REVENUES NOT TO DECREASE.—The total amount of the revenue received by any possession referred to in subsection (a) pursuant to its tax laws during the implementation year and each of the 4 fiscal years thereafter shall not be less than the revenue (adjusted for inflation) which was received by such possession pursuant to tax laws for its last fiscal year before the implementation year.

''(d) NONDISCRIMINATORY TREATMENT REQUIRED.—Nothing in any tax law of a possession referred to in subsection (a) may discriminate against any United States person or any resident (corporate or otherwise) of any other possession.

''(e) ENFORCEMENT.—

''(1) IN GENERAL.—If the Secretary of the Treasury (after consultation with the Secretary of the Interior) determines that any possession has failed to comply with subsection (c) or (d), the Secretary of the Treasury shall so notify the Governor of such possession in writing. If such possession does not comply with subsection (c) or (d) (as the case may be) within 90 days of such notification, the Secretary of the Treasury shall notify the Congress of such noncompliance. Unless the Congress by law provides otherwise, the mirror system of taxation shall be reinstated in such possession and shall be in full force and effect for taxable years beginning after such notification to the Congress.

''(2) SPECIAL RULE FOR REVENUE REQUIREMENTS.—If the failure to comply with subsection (c) is for good cause and does not jeopardize the fiscal integrity of the possession, the Secretary may waive the requirements of subsection (c) for such period as he determines appropriate.

''(f) DEFINITIONS AND SPECIAL RULES.—

''(1) IMPLEMENTATION YEAR.—For purposes of this section, the term ''implementation year'' means the 1st fiscal year of the possession in which the tax laws authorized by subsection (a) take effect.

''(2) MIRROR SYSTEM.—For purposes of this section, the mirror system of taxation consists of the provisions of law (in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) which make the provisions of the income tax laws of the United States (as in effect from time to time) in effect in a possession of the United States.

''(3) SPECIAL RULE FOR NORTHERN MARIANA ISLANDS.—Notwithstanding the provisions of the last clause of section 601(a) of Public Law 94–241 [48 U.S.C. 1801 note], the Commonwealth of the Northern Mariana Islands may elect to continue its mirror system of taxation without regard to whether Guam enacts tax laws under the authority provided in subsection (a).''

§ 932. Coordination of United States and Virgin Islands income taxes

(a) Treatment of United States residents

(1) Application of subsection

This subsection shall apply to an individual for the taxable year if—

(A) such individual—

(i) is a citizen or resident of the United States (other than a bona fide resident of the Virgin Islands during the entire taxable year), and

(ii) has income derived from sources within the Virgin Islands, or effectively connected with the conduct of a trade or business within such possession, for the taxable year, or

(B) such individual files a joint return for the taxable year with an individual described in subparagraph (A).

(2) Filing requirement

Each individual to whom this subsection applies for the taxable year shall file his income tax return for the taxable year with both the United States and the Virgin Islands.

(3) Extent of income tax liability

In the case of an individual to whom this subsection applies in a taxable year for purposes of so much of this title (other than this section and section 7654) as relates to the taxes imposed by this chapter, the United States shall be treated as including the Virgin Islands.

(b) Portion of United States tax liability payable to the Virgin Islands

(1) In general

Each individual to whom subsection (a) applies for the taxable year shall pay the applicable percentage of the taxes imposed by this chapter for such taxable year (determined without regard to paragraph (3)) to the Virgin Islands.

(2) Applicable percentage

(A) In general

For purposes of paragraph (1), the term ''applicable percentage'' means the percentage which Virgin Islands adjusted gross income bears to adjusted gross income.

(B) Virgin Islands adjusted gross income

For purposes of subparagraph (A), the term ''Virgin Islands adjusted gross income'' means adjusted gross income determined by taking into account only income derived from sources within the Virgin Islands and deductions properly apportioned or allocable thereto.

(3) Amounts paid allowed as credit

There shall be allowed as a credit against the tax imposed by this chapter for the tax-

able year an amount equal to the taxes required to be paid to the Virgin Islands under paragraph (1) which are so paid.

(c) Treatment of Virgin Islands residents

(1) Application of subsection

This subsection shall apply to an individual for the taxable year if—

(A) such individual is a bona fide resident of the Virgin Islands during the entire taxable year, or

(B) such individual files a joint return for the taxable year with an individual described in subparagraph (A).

(2) Filing requirement

Each individual to whom this subsection applies for the taxable year shall file an income tax return for the taxable year with the Virgin Islands.

(3) Extent of income tax liability

In the case of an individual to whom this subsection applies in a taxable year for purposes of so much of this title (other than this section and section 7654) as relates to the taxes imposed by this chapter, the Virgin Islands shall be treated as including the United States.

(4) Residents of the Virgin Islands

In the case of an individual—

(A) who is a bona fide resident of the Virgin Islands during the entire taxable year,

(B) who, on his return of income tax to the Virgin Islands, reports income from all sources and identifies the source of each item shown on such return, and

(C) who fully pays his tax liability referred to in section 934(a) to the Virgin Islands with respect to such income,

for purposes of calculating income tax liability to the United States, gross income shall not include any amount included in gross income on such return, and allocable deductions and credits shall not be taken into account.

(d) Special rule for joint returns

In the case of a joint return, this section shall be applied on the basis of the residence of the spouse who has the greater adjusted gross income (determined without regard to community property laws) for the taxable year.

(e) Special rule for applying section to tax imposed in Virgin Islands

In applying this section for purposes of determining income tax liability incurred to the Virgin Islands, the provisions of this section shall not be affected by the provisions of Federal law referred to in section 934(a).

(Added Pub. L. 99–514, title XII, §1274(a), Oct. 22, 1986, 100 Stat. 2596; amended Pub. L. 100–647, title I, §1012(w)(1)–(3), Nov. 10, 1988, 102 Stat. 3530; Pub. L. 108–357, title VIII, §908(c)(2), Oct. 22, 2004, 118 Stat. 1656.)

PRIOR PROVISIONS

A prior section 932, acts Aug. 16, 1954, ch. 736, 68A Stat. 292; Nov. 13, 1966, Pub. L. 89–809, title I, §103(m), 80 Stat. 1554; Oct. 31, 1972, Pub. L. 92–606, §1(f)(2), (3), 86 Stat. 1497; Apr. 7, 1986, Pub. L. 99–272, title XII, §12103(a), 100 Stat. 285, related to income taxation of citizens of possessions of the United States, prior to repeal by Pub. L. 99–514, title XII, §1272(d)(1), Oct. 22, 1986, 100 Stat. 2594.

AMENDMENTS

2004—Subsecs. (a)(1)(A)(i), (c)(1)(A), (4)(A). Pub. L. 108–357 substituted ''during the entire taxable year'' for ''at the close of the taxable year''.

1988—Subsec. (c)(2). Pub. L. 100–647, §1012(w)(3), substituted ''an income tax return'' for ''his income tax return''.

Subsec. (c)(4). Pub. L. 100–647, §1012(w)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''In the case of an individual who is a bona fide resident of the Virgin Islands at the close of the taxable year and who, on his return of income tax to the Virgin Islands, reports income from all sources and identifies the source of each item shown on such return, for purposes of calculating income tax liability to the United States gross income shall not include any amount included in gross income on such return.''

Subsec. (e). Pub. L. 100–647, §1012(w)(1), substituted current heading for ''Section not to apply to tax imposed in Virgin Islands'' and amended text generally. Prior to amendment, text read as follows: ''This section shall not apply for purposes of determining income tax liability incurred to the Virgin Islands.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 908(d)(1) of Pub. L. 108–357, set out as an Effective Date note under section 937 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Enactment of section 932 and repeal of prior section 932 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 931 of this title.

REGULATIONS

Section 1274(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1012(w)(4), Nov. 10, 1988, 102 Stat. 3530, provided that: ''The Secretary of the Treasury or his delegate shall prescribe such regulations as may be necessary or appropriate for applying the Internal Revenue Code of 1986 [this title] for purposes of determining tax liability incurred to the Virgin Islands.''

AUTHORITY TO IMPOSE NONDISCRIMINATORY LOCAL INCOME TAXES

Section 1274(b) of Pub. L. 99–514 provided that: ''Nothing in any provision of Federal law shall prevent the Virgin Islands from imposing on any person nondiscriminatory local income taxes. Any taxes so imposed shall be treated in the same manner as State and local income taxes under section 164 of the Internal Revenue Code of 1954 [now 1986] and shall not be treated as taxes to which section 901 of such Code applies.''

§933. Income from sources within Puerto Rico

The following items shall not be included in gross income and shall be exempt from taxation under this subtitle:

(1) Resident of Puerto Rico for entire taxable year

In the case of an individual who is a bona fide resident of Puerto Rico during the entire

taxable year, income derived from sources within Puerto Rico (except amounts received for services performed as an employee of the United States or any agency thereof); but such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction under section 151, relating to personal exemptions), or any credit, properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

(2) Taxable year of change of residence from Puerto Rico

In the case of an individual citizen of the United States who has been a bona fide resident of Puerto Rico for a period of at least 2 years before the date on which he changes his residence from Puerto Rico, income derived from sources therein (except amounts received for services performed as an employee of the United States or any agency thereof) which is attributable to that part of such period of Puerto Rican residence before such date; but such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction for personal exemptions under section 151), or any credit, properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

(Aug. 16, 1954, ch. 736, 68A Stat. 293; Pub. L. 99–514, title XII, § 1272(d)(3), Oct. 22, 1986, 100 Stat. 2594.)

AMENDMENTS

1986—Pub. L. 99–514 inserted ‘‘, or any credit,’’ in pars. (1) and (2).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

§ 934. Limitation on reduction in income tax liability incurred to the Virgin Islands

(a) General rule

Tax liability incurred to the Virgin Islands pursuant to this subtitle, as made applicable in the Virgin Islands by the Act entitled ‘‘An Act making appropriations for the naval service for the fiscal year ending June 30, 1922, and for other purposes’’, approved July 12, 1921 (48 U.S.C. 1397), or pursuant to section 28(a) of the Revised Organic Act of the Virgin Islands, approved July 22, 1954 (48 U.S.C. 1642), shall not be reduced or remitted in any way, directly or indirectly, whether by grant, subsidy, or other similar payment, by any law enacted in the Virgin Islands, except to the extent provided in subsection (b).

(b) Reductions permitted with respect to certain income

(1) In general

Except as provided in paragraph (2), subsection (a) shall not apply with respect to so much of the tax liability referred to in subsection (a) as is attributable to income derived from sources within the Virgin Islands or income effectively connected with the conduct of a trade or business within the Virgin Islands.

(2) Exception for liability paid by citizens or residents of the United States

Paragraph (1) shall not apply to any liability payable to the Virgin Islands under section 932(b).

(3) Special rule for non-United States income of certain foreign corporations

(A) In general

In the case of a qualified foreign corporation, subsection (a) shall not apply with respect to so much of the tax liability referred to in subsection (a) as is attributable to income which is derived from sources outside the United States and which is not effectively connected with the conduct of a trade or business within the United States.

(B) Qualified foreign corporation

For purposes of subparagraph (A), the term ‘‘qualified foreign corporation’’ means any foreign corporation if less than 10 percent of—

(i) the total voting power of the stock of such corporation, and

(ii) the total value of the stock of such corporation, is owned or treated as owned (within the meaning of section 958) by 1 or more United States persons.

(4) Determination of income source, etc.

The determination as to whether income is derived from sources within the United States or is effectively connected with the conduct of a trade or business within the United States shall be made under regulations prescribed by the Secretary.

(Added Pub. L. 86–779, § 4(a)(1), Sept. 14, 1960, 74 Stat. 998; amended Pub. L. 94–455, title XIX, §§ 1901(a)(118), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1784, 1834; Pub. L. 97–248, title II, § 213(b), Sept. 3, 1982, 96 Stat. 463; Pub. L. 97–455, § 1(c), Jan. 12, 1983, 96 Stat. 2498; Pub. L. 98–369, div. A, title VIII, § 801(d)(7), July 18, 1984, 98 Stat. 996; Pub. L. 99–514, title XII, § 1275(a)(2)(A), (c)(1), (2), title XVIII, § 1876(f)(2), Oct. 22, 1986, 100 Stat. 2598, 2900; Pub. L. 108–357, title VIII, § 908(c)(3), Oct. 22, 2004, 118 Stat. 1656.)

AMENDMENTS

2004—Subsec. (b)(4). Pub. L. 108–357 struck out ‘‘the Virgin Islands or’’ before ‘‘the United States’’ in two places.

1986—Subsec. (a). Pub. L. 99–514, § 1275(c)(2)(A), struck out ‘‘or (c) or in section 934A’’ after ‘‘subsection (b)’’.

Subsec. (b). Pub. L. 99–514, § 1275(c)(1), (2)(B), added subsec. (b) and struck out former subsec. (b) which excepted from subsec. (a) domestic or Virgin Islands corporations to the extent they derived income from sources without the United States under certain conditions.

Subsec. (c). Pub. L. 99–514, § 1275(c)(1), struck out subsec. (c) which provided an exception to subsec. (a) of this section for individual citizens of the United States residing in the Virgin Islands to the extent their income is derived from sources within the Virgin Islands.

Subsec. (d). Pub. L. 99–514, § 1275(c)(1), struck out subsec. (d) which related to requirement to supply information.

Subsec. (e). Pub. L. 99–514, § 1275(a)(2)(A), struck out subsec. (e) which provided for tax treatment of intangible property income of certain domestic corporations.

Subsec. (f). Pub. L. 99–514, §1275(a)(2)(A), struck out subsec. (f) which provided a transitional rule for applying subsec. (b)(2) of this section with respect to taxable years beginning after Dec. 31, 1982, and before Jan. 1, 1985.

Pub. L. 99–514, §1876(f)(2), struck out subsec. (f) which provided that subsec. (a) of this section not apply in the case of a Virgin Islands corporation which is a FSC.

1984—Subsec. (f). Pub. L. 98–369 added subsec. (f) relating to FSC.

1983—Subsec. (a). Pub. L. 97–455 inserted ''or in section 934A'' after ''subsection (b) or (c)''.

1982—Subsec. (b)(2). Pub. L. 97–248, §213(b)(1), substituted ''65 percent'' for ''50 percent''.

Subsec. (e). Pub. L. 97–248, §213(b)(2), added subsec. (e).

Subsec. (f). Pub. L. 97–248, §213(b)(2), added a temporary subsec. (f) which provided that in applying subsec. (b)(2) with respect to taxable years beginning after December 31, 1982, and before January 1, 1985, ''55 percent'' shall be substituted for ''65 percent'' for taxable years beginning in calendar year 1983 and ''60 percent'' shall be substituted for ''65 percent'' for taxable years beginning in calendar year 1984.

1976—Subsec. (b). Pub. L. 94–455, §1901(a)(118), struck out ''For the purposes of this subsection, all amounts received by such corporation within the United States, whether derived from sources within or without the United States, shall be considered as being derived from sources within the United States''.

Subsec. (d). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in two places.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 908(d)(1) of Pub. L. 108–357, set out as an Effective Date note under section 937 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1275(a)(2)(A), (c)(1), (2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1876(f)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 1(e) of Pub. L. 97–455 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 934A and amending this section] shall apply to amounts received after the date of the enactment of this Act [Jan. 12, 1983] in taxable years ending after such date.

''(2) WITHHOLDING.—The amendment made by subsection (b) [enacting section 1444 of this title] shall apply to payments made after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, except that so much of this section to which section 936(h)(6) applies by reason of subsec. (e)(4) of this section is applicable to taxable years ending after July 1, 1982, see section 213(e)(1), (2) of Pub. L. 97–248 set out as a note under section 936 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(118) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section 4(e)(1) of Pub. L. 86–779 provided that: ''The amendments made by subsection (a) [enacting this section] shall apply to tax liability incurred with respect to taxable years beginning on or after January 1, 1960.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

REPORT ON POSSESSIONS CORPORATIONS

For provisions requiring the Secretary of the Treasury to submit a report to Congress respecting the operation and effect of subsec. (b) of this section for the year 1981 and each second calendar year thereafter, see section 441(a) of Pub. L. 98–369, set out as a note under section 936 of this title.

[§934A. Repealed. Pub. L. 99–514, title XII, §1275(c)(3), Oct. 22, 1986, 100 Stat. 2599]

Section, added Pub. L. 97–455, §1(a), Jan. 12, 1983, 96 Stat. 2497, related to income tax rate on Virgin Islands source income.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 931 of this title.

[§935. Repealed. Pub. L. 99–514, title XII, §1272(d)(2), Oct. 22, 1986, 100 Stat. 2594]

Section, added Pub. L. 92–606, §1(a), Oct. 31, 1972, 86 Stat. 1494; amended Pub. L. 108–357, title VIII, §908(c)(4), Oct. 22, 2004, 118 Stat. 1656, related to coordination of United States and Guam individual income taxes.

AMENDMENT SUBSEQUENT TO REPEAL

Pub. L. 108–357, title IX, §908(c)(4), (d), Oct. 22, 2004, 118 Stat. 1656, 1657, applicable to taxable years ending after Oct. 22, 2004, amended section, as in effect before the effective date of its repeal, in introductory provisions of subsec. (a), by substituting ''who, during the entire taxable year'' for ''for the taxable year who'', in subsecs. (a)(1) and (b)(1)(B), by inserting ''bona fide'' before ''resident'', in subsec. (b)(1)(A), by inserting ''(other a bona fide resident of Guam during the entire taxable year)'' after ''United States'', and, in subsection (b)(2), by striking out ''residence and'' before ''citizenship''.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 931 of this title.

§936. Puerto Rico and possession tax credit

(a) Allowance of credit

(1) In general

Except as otherwise provided in this section, if a domestic corporation elects the applica-

tion of this section and if the conditions of both subparagraph (A) and subparagraph (B) of paragraph (2) are satisfied, there shall be allowed as a credit against the tax imposed by this chapter an amount equal to the portion of the tax which is attributable to the sum of—

(A) the taxable income, from sources without the United States, from—

(i) the active conduct of a trade or business within a possession of the United States, or

(ii) the sale or exchange of substantially all of the assets used by the taxpayer in the active conduct of such trade or business, and

(B) the qualified possession source investment income.

(2) Conditions which must be satisfied

The conditions referred to in paragraph (1) are:

(A) 3-year period

If 80 percent or more of the gross income of such domestic corporation for the 3-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States (determined without regard to subsections (f) and (g) of section 904); and

(B) Trade or business

If 75 percent or more of the gross income of such domestic corporation for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States.

(3) Credit not allowed against certain taxes

The credit provided by paragraph (1) shall not be allowed against the tax imposed by—

(A) section 59A (relating to environmental tax),

(B) section 531 (relating to the tax on accumulated earnings),

(C) section 541 (relating to personal holding company tax), or

(D) section 1351 (relating to recoveries of foreign expropriation losses).

(4) Limitations on credit for active business income

(A) In general

The amount of the credit determined under paragraph (1) for any taxable year with respect to income referred to in subparagraph (A) thereof shall not exceed the sum of the following amounts:

(i) 60 percent of the sum of—

(I) the aggregate amount of the possession corporation's qualified possession wages for such taxable year, plus

(II) the allocable employee fringe benefit expenses of the possession corporation for the taxable year.

(ii) The sum of—

(I) 15 percent of the depreciation allowances for the taxable year with respect to short-life qualified tangible property,

(II) 40 percent of the depreciation allowances for the taxable year with respect to medium-life qualified tangible property, and

(III) 65 percent of the depreciation allowances for the taxable year with respect to long-life qualified tangible property.

(iii) If the possession corporation does not have an election to use the method described in subsection (h)(5)(C)(ii) (relating to profit split) in effect for the taxable year, the amount of qualified possession income taxes for the taxable year allocable to nonsheltered income.

(B) Election to take reduced credit

(i) In general

If an election under this subparagraph applies to a possession corporation for any taxable year—

(I) subparagraph (A), and the provisions of subsection (i), shall not apply to such possession corporation for such taxable year, and

(II) the credit determined under paragraph (1) for such taxable year with respect to income referred to in subparagraph (A) thereof shall be the applicable percentage of the credit which would otherwise have been determined under such paragraph with respect to such income.

Notwithstanding subclause (I), a possession corporation to which an election under this subparagraph applies shall be entitled to the benefits of subsection (i)(3)(B) for taxes allocable (on a pro rata basis) to taxable income the tax on which is not offset by reason of this subparagraph.

(ii) Applicable percentage

The term ''applicable percentage'' means the percentage determined in accordance with the following table:

In the case of taxable years beginning in:	The percentage is:
1994	60
1995	55
1996	50
1997	45
1998 and thereafter	40.

(iii) Election

(I) In general

An election under this subparagraph by any possession corporation may be made only for the corporation's first taxable year beginning after December 31, 1993, for which it is a possession corporation.

(II) Period of election

An election under this subparagraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked.

(III) Affiliated groups

If, for any taxable year, an election is not in effect for any possession corpora-

tion which is a member of an affiliated group, any election under this subparagraph for any other member of such group is revoked for such taxable year and all subsequent taxable years. For purposes of this subclause, members of an affiliated group shall be determined without regard to the exceptions contained in section 1504(b) and as if the constructive ownership rules of section 1563(e) applied for purposes of section 1504(a). The Secretary may prescribe regulations to prevent the avoidance of this subclause through deconsolidation or otherwise.

(C) Cross reference

For definitions and special rules applicable to this paragraph, see subsection (i).

(b) Amounts received in United States

In determining taxable income for purposes of subsection (a), there shall not be taken into account as income from sources without the United States any gross income which was received by such domestic corporation within the United States, whether derived from sources within or without the United States. This subsection shall not apply to any amount described in subsection (a)(1)(A)(i) received from a person who is not a related person (within the meaning of subsection (h)(3) but without regard to subparagraphs (D)(ii) and (E)(i) thereof) with respect to the domestic corporation.

(c) Treatment of certain foreign taxes

For purposes of this title, any tax of a foreign country or a possession of the United States which is paid or accrued with respect to taxable income which is taken into account in computing the credit under subsection (a) shall not be treated as income, war profits, or excess profits taxes paid or accrued to a foreign country or possession of the United States, and no deduction shall be allowed under this title with respect to any amounts so paid or accrued.

(d) Definitions and special rules

For purposes of this section—

(1) Possession

The term ''possession of the United States'' includes the Commonwealth of Puerto Rico and the Virgin Islands.

(2) Qualified possession source investment income

The term ''qualified possession source investment income'' means gross income which—

(A) is from sources within a possession of the United States in which a trade or business is actively conducted, and

(B) the taxpayer establishes to the satisfaction of the Secretary is attributable to the investment in such possession (for use therein) of funds derived from the active conduct of a trade or business in such possession, or from such investment,

less the deductions properly apportioned or allocated thereto.

(3) Carryover basis property

(A) In general

Income from the sale or exchange of any asset the basis of which is determined in whole or in part by reference to its basis in the hands of another person shall not be treated as income described in subparagraph (A) or (B) of subsection (a)(1).

(B) Exception for possessions corporations, etc.

For purposes of subparagraph (A), the holding of any asset by another person shall not be taken into account if throughout the period for which such asset was held by such person section 931, this section, or section 957(c) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applied to such person.

(4) Investment in qualified Caribbean Basin countries

(A) In general

For purposes of paragraph (2)(B), an investment in a financial institution shall, subject to such conditions as the Secretary may prescribe by regulations, be treated as for use in Puerto Rico to the extent used by such financial institution (or by the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank)—

(i) for investment, consistent with the goals and purposes of the Caribbean Basin Economic Recovery Act, in—

(I) active business assets in a qualified Caribbean Basin country, or

(II) development projects in a qualified Caribbean Basin country, and

(ii) in accordance with a specific authorization granted by the Commissioner of Financial Institutions of Puerto Rico pursuant to regulations issued by such Commissioner.

A similar rule shall apply in the case of a direct investment in the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank.

(B) Qualified Caribbean Basin country

For purposes of this subsection, the term ''qualified Caribbean Basin country'' means any beneficiary country (within the meaning of section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act) which meets the requirements of clauses (i) and (ii) of section 274(h)(6)(A) and the Virgin Islands.

(C) Additional requirements

Subparagraph (A) shall not apply to any investment made by a financial institution (or by the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank) unless—

(i) the person in whose trade or business such investment is made (or such other recipient of the investment) and the financial institution or such Bank certify to the Secretary and the Commissioner of Financial Institutions of Puerto Rico that the

proceeds of the loan will be promptly used to acquire active business assets or to make other authorized expenditures, and

(ii) the financial institution (or the Government Development Bank for Puerto Rico or the Puerto Rico Economic Development Bank) and the recipient of the investment funds agree to permit the Secretary and the Commissioner of Financial Institutions of Puerto Rico to examine such of their books and records as may be necessary to ensure that the requirements of this paragraph are met.

(D) Requirement for investment in Caribbean Basin countries

(i) In general

For each calendar year, the government of Puerto Rico shall take such steps as may be necessary to ensure that at least $100,000,000 of qualified Caribbean Basin country investments are made during such calendar year.

(ii) Qualified Caribbean Basin country investment

For purposes of clause (i), the term ''qualified Caribbean Basin country investment'' means any investment if—

(I) the income from such investment is treated as qualified possession source investment income by reason of subparagraph (A), and

(II) such investment is not (directly or indirectly) a refinancing of a prior investment (whether or not such prior investment was a qualified Caribbean Basin country investment).

(e) Election

(1) Period of election

The election provided in subsection (a) shall be made at such time and in such manner as the Secretary may by regulations prescribe. Any such election shall apply to the first taxable year for which such election was made and for which the domestic corporation satisfied the conditions of subparagraphs (A) and (B) of subsection (a)(2) and for each taxable year thereafter until such election is revoked by the domestic corporation under paragraph (2). If any such election is revoked by the domestic corporation under paragraph (2), such domestic corporation may make a subsequent election under subsection (a) for any taxable year thereafter for which such domestic corporation satisfies the conditions of subparagraphs (A) and (B) of subsection (a)(2) and any such subsequent election shall remain in effect until revoked by such domestic corporation under paragraph (2).

(2) Revocation

An election under subsection (a)—

(A) may be revoked for any taxable year beginning before the expiration of the 9th taxable year following the taxable year for which such election first applies only with the consent of the Secretary; and

(B) may be revoked for any taxable year beginning after the expiration of such 9th taxable year without the consent of the Secretary.

(f) Limitation on credit for DISC's and FSC's

No credit shall be allowed under this section to a corporation for any taxable year—

(1) for which it is a DISC or former DISC, or

(2) in which it owns at any time stock in a—

(A) DISC or former DISC, or

(B) former FSC.

(g) Exception to accumulated earnings tax

(1) For purposes of section 535, the term ''accumulated taxable income'' shall not include taxable income entitled to the credit under subsection (a).

(2) For purposes of section 537, the term ''reasonable needs of the business'' includes assets which produce income eligible for the credit under subsection (a).

(h) Tax treatment of intangible property income

(1) In general

(A) Income attributable to shareholders

The intangible property income of a corporation electing the application of this section for any taxable year shall be included on a pro rata basis in the gross income of all shareholders of such electing corporation at the close of the taxable year of such electing corporation as income from sources within the United States for the taxable year of such shareholder in which or with which the taxable year of such electing corporation ends.

(B) Exclusion from the income of an electing corporation

Any intangible property income of a corporation electing the application of this section which is included in the gross income of a shareholder of such corporation by reason of subparagraph (A) shall be excluded from the gross income of such corporation.

(2) Foreign shareholders; shareholders not subject to tax

(A) In general

Paragraph (1)(A) shall not apply with respect to any shareholder—

(i) who is not a United States person, or

(ii) who is not subject to tax under this title on intangible property income which would be allocated to such shareholder (but for this subparagraph).

(B) Treatment of nonallocated intangible property income

For purposes of this subtitle, intangible property income of a corporation electing the application of this section which is not included in the gross income of a shareholder of such corporation by reason of subparagraph (A)—

(i) shall be treated as income from sources within the United States, and

(ii) shall not be taken into account under subsection (a)(2).

(3) Intangible property income

For purposes of this subsection—

(A) In general

The term ''intangible property income'' means the gross income of a corporation at-

tributable to any intangible property other than intangible property which has been licensed to such corporation since prior to 1948 and is in use by such corporation on the date of the enactment of this subparagraph.

(B) Intangible property

The term ''intangible property'' means any—

(i) patent, invention, formula, process, design, pattern, or know-how;

(ii) copyright, literary, musical, or artistic composition;

(iii) trademark, trade name, or brand name;

(iv) franchise, license, or contract;

(v) method, program, system, procedure, campaign, survey, study, forecast, estimate, customer list, or technical data; or

(vi) any similar item,

which has substantial value independent of the services of any individual.

(C) Exclusion of reasonable profit

The term ''intangible property income'' shall not include any portion of the income from the sale, exchange or other disposition of any product, or from the rendering of services, by a corporation electing the application of this section which is determined by the Secretary to be a reasonable profit on the direct and indirect costs incurred by such electing corporation which are attributable to such income.

(D) Related person

(i) In general

A person (hereinafter referred to as the ''related person'') is related to any person if—

(I) the related person bears a relationship to such person specified in section 267(b) or section 707(b)(1), or

(II) the related person and such person are members of the same controlled group of corporations.

(ii) Special rule

For purposes of clause (i), section 267(b) and section 707(b)(1) shall be applied by substituting ''10 percent'' for ''50 percent''.

(E) Controlled group of corporations

The term ''controlled group of corporations'' has the meaning given to such term by section 1563(a), except that—

(i) ''more than 10 percent'' shall be substituted for ''at least 80 percent'' and ''more than 50 percent'' each place either appears in section 1563(a), and

(ii) the determination shall be made without regard to subsections (a)(4), (b)(2), and (e)(3)(C) of section 1563.

(4) Distributions to meet qualification requirements

(A) In general

If the Secretary determines that a corporation does not satisfy a condition specified in subparagraph (A) or (B) of subsection (a)(2) for any taxable year by reason of the exclusion from gross income under paragraph (1)(B), such corporation shall nevertheless be treated as satisfying such condition for such year if it makes a pro rata distribution of property after the close of such taxable year to its shareholders (designated at the time of such distribution as a distribution to meet qualification requirements) with respect to their stock in an amount which is equal to—

(i) if the condition of subsection (a)(2)(A) is not satisfied, that portion of the gross income for the period described in subsection (a)(2)(A)—

(I) which was not derived from sources within a possession, and

(II) which exceeds the amount of such income for such period which would enable such corporation to satisfy the condition of subsection (a)(2)(A),

(ii) if the condition of subsection (a)(2)(B) is not satisfied, that portion of the gross income for such period—

(I) which was not derived from the active conduct of a trade or business within a possession, and

(II) which exceeds the amount of such income for such period which would enable such corporation to satisfy the conditions of subsection (a)(2)(B), or

(iii) if neither of such conditions is satisfied, that portion of the gross income which exceeds the amount of gross income for such period which would enable such corporation to satisfy the conditions of subparagraphs (A) and (B) of subsection (a)(2).

(B) Effectively connected income

In the case of a shareholder who is a nonresident alien individual or a foreign corporation, trust, or estate, any distribution described in subparagraph (A) shall be treated as income which is effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States.

(C) Distribution denied in case of fraud or willful neglect

Subparagraph (A) shall not apply to a corporation if the determination of the Secretary described in subparagraph (A) contains a finding that the failure of such corporation to satisfy the conditions in subsection (a)(2) was due in whole or in part to fraud with intent to evade tax or willful neglect on the part of such corporation.

(5) Election out

(A) In general

The rules contained in paragraphs (1) through (4) do not apply for any taxable year if an election pursuant to subparagraph (F) is in effect to use one of the methods specified in subparagraph (C).

(B) Eligibility

(i) Requirement of significant business presence

An election may be made to use one of the methods specified in subparagraph (C)

with respect to a product or type of service only if an electing corporation has a significant business presence in a possession with respect to such product or type of service. An election may remain in effect with respect to such product or type of service for any subsequent taxable year only if such electing corporation maintains a significant business presence in a possession with respect to such product or type of service in such subsequent taxable year. If an election is not in effect for a taxable year because of the preceding sentence, the electing corporation shall be deemed to have revoked the election on the first day of such taxable year.

(ii) Definition

For purposes of this subparagraph, an electing corporation has a ''significant business presence'' in a possession for a taxable year with respect to a product or type of service if:

(I) the total production costs (other than direct material costs and other than interest excluded by regulations prescribed by the Secretary) incurred by the electing corporation in the possession in producing units of that product sold or otherwise disposed of during the taxable year by the affiliated group to persons who are not members of the affiliated group are not less than 25 percent of the difference between (a) the gross receipts from sales or other dispositions during the taxable year by the affiliated group to persons who are not members of the affiliated group of such units of the product produced, in whole or in part, by the electing corporation in the possession, and (b) the direct material costs of the purchase of materials for such units of that product by all members of the affiliated group from persons who are not members of the affiliated group; or

(II) no less than 65 percent of the direct labor costs of the affiliated group for units of the product produced during the taxable year in whole or in part by the electing corporation or for the type of service rendered by the electing corporation during the taxable year, is incurred by the electing corporation and is compensation for services performed in the possession; or

(III) with respect to purchases and sales by an electing corporation of all goods not produced in whole or in part by any member of the affiliated group and sold by the electing corporation to persons other than members of the affiliated group, no less than 65 percent of the total direct labor costs of the affiliated group in connection with all purchases and sales of such goods sold during the taxable year by such electing corporation is incurred by such electing corporation and is compensation for services performed in the possession.

Notwithstanding satisfaction of one of the foregoing tests, an electing corporation shall not be treated as having a significant business presence in a possession with respect to a product produced in whole or in part by the electing corporation in the possession, for purposes of an election to use the method specified in subparagraph (C)(ii), unless such product is manufactured or produced in the possession by the electing corporation within the meaning of subsection (d)(1)(A) of section 954.

(iii) Special rules

(I) An electing corporation which produces a product or renders a type of service in a possession on the date of the enactment of this clause is not required to meet the significant business presence test in a possession with respect to such product or type of service for its taxable years beginning before January 1, 1986.

(II) For purposes of this subparagraph, the costs incurred by an electing corporation or any other member of the affiliated group in connection with contract manufacturing by a person other than a member of the affiliated group, or in connection with a similar arrangement thereto, shall be treated as direct labor costs of the affiliated group and shall not be treated as production costs incurred by the electing corporation in the possession or as direct material costs or as compensation for services performed in the possession, except to the extent as may be otherwise provided in regulations prescribed by the Secretary.

(iv) Regulations

The Secretary may prescribe regulations setting forth:

(I) an appropriate transitional (but not in excess of three taxable years) significant business presence test for commencement in a possession of operations with respect to products or types of service after the date of the enactment of this clause and not described in subparagraph (B)(iii)(I),

(II) a significant business presence test for other appropriate cases, consistent with the tests specified in subparagraph (B)(ii),

(III) rules for the definition of a product or type of service, and

(IV) rules for treating components produced in whole or in part by a related person as materials, and the costs (including direct labor costs) related thereto as a cost of materials, where there is an independent resale price for such components or where otherwise consistent with the intent of the substantial business presence tests.

(C) Methods of computation of taxable income

If an election of one of the following methods is in effect pursuant to subparagraph (F) with respect to a product or type of service, an electing corporation shall compute its income derived from the active conduct of a trade or business in a possession with re-

spect to such product or type of service in accordance with the method which is elected.

(i) Cost sharing

(I) Payment of cost sharing

If an election of this method is in effect, the electing corporation must make a payment for its share of the cost (if any) of product area research which is paid or accrued by the affiliated group during that taxable year. Such share shall not be less than the same proportion of 110 percent of the cost of such product area research which the amount of ''possession sales'' bears to the amount of ''total sales'' of the affiliated group. The cost of product area research paid or accrued solely by the electing corporation in a taxable year (excluding amounts paid directly or indirectly to or on behalf of related persons and excluding amounts paid under any cost sharing agreements with related persons) will reduce (but not below zero) the amount of the electing corporation's cost sharing payment under this method for that year. In the case of intangible property described in subsection (h)(3)(B)(i) which the electing corporation is treated as owning under subclause (II), in no event shall the payment required under this subclause be less than the inclusion or payment which would be required under section 367(d)(2)(A)(ii) or section 482 if the electing corporation were a foreign corporation.

(a) Product area research

For purposes of this section, the term ''product area research'' includes (notwithstanding any provision to the contrary) the research, development and experimental costs, losses, expenses and other related deductions—including amounts paid or accrued for the performance of research or similar activities by another person; qualified research expenses within the meaning of section 41(b); amounts paid or accrued for the use of, or the right to use, research or any of the items specified in subsection (h)(3)(B)(i); and a proper allowance for amounts incurred for the acquisition of any of the items specified in subsection (h)(3)(B)(i)—which are properly apportioned or allocated to the same product area as that in which the electing corporation conducts its activities, and a ratable part of any such costs, losses, expenses and other deductions which cannot definitely be allocated to a particular product area.

(b) Affiliated group

For purposes of this subsection, the term ''affiliated group'' shall mean the electing corporation and all other organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, within the meaning of section 482.

(c) Possession sales

For purposes of this section, the term ''possession sales'' means the aggregate sales or other dispositions for the taxable year to persons who are not members of the affiliated group by members of the affiliated group of products produced, in whole or in part, by the electing corporation in the possession which are in the same product area as is used for determining the amount of product area research, and of services rendered, in whole or in part, in the possession in such product area to persons who are not members of the affiliated group.

(d) Total sales

For purposes of this section, the term ''total sales'' means the aggregate sales or other dispositions for the taxable year to persons who are not members of the affiliated group by members of the affiliated group of all products in the same product area as is used for determining the amount of product area research, and of services rendered in such product area to persons who are not members of the affiliated group.

(e) Product area

For purposes of this section, the term ''product area'' shall be defined by reference to the three-digit classification of the Standard Industrial Classification code. The Secretary may provide for the aggregation of two or more three-digit classifications where appropriate, and for a classification system other than the Standard Industrial Classification code in appropriate cases.

(II) Effect of election

For purposes of determining the amount of its gross income derived from the active conduct of a trade or business in a possession with respect to a product produced by, or type of service rendered by, the electing corporation for a taxable year, if an election of this method is in effect, the electing corporation shall be treated as the owner (for purposes of obtaining a return thereon) of intangible property described in subsection (h)(3)(B)(i) which is related to the units of the product produced, or type of service rendered, by the electing corporation. Such electing corporation shall not be treated as the owner (for purposes of obtaining a return thereon) of any intangible property described in subsection (h)(3)(B)(ii) through (v) (to the extent not described in subsection (h)(3)(B)(i)) or of any other nonmanufacturing intangible. Notwithstanding the preceding

sentence, an electing corporation shall be treated as the owner (for purposes of obtaining a return thereon) of (a) intangible property which was developed solely by such corporation in a possession and is owned by such corporation, (b) intangible property described in subsection (h)(3)(B)(i) acquired by such corporation from a person who was not related to such corporation (or to any person related to such corporation) at the time of, or in connection with, such acquisition, and (c) any intangible property described in subsection (h)(3)(B)(ii) through (v) (to the extent not described in subsection (h)(3)(B)(i)) and other nonmanufacturing intangibles which relate to sales of units of products, or services rendered, to unrelated persons for ultimate consumption or use in the possession in which the electing corporation conducts its trade or business.

(III) Payment provisions

(a) The cost sharing payment determined under subparagraph (C)(i)(I) for any taxable year shall be made to the person or persons specified in subparagraph (C)(i)(IV)(a) not later than the time prescribed by law for filing the electing corporation's return for such taxable year (including any extensions thereof). If all or part of such payment is not timely made, the amount of the cost sharing payment required to be paid shall be increased by the amount of interest that would have been due under section 6601(a) had the portion of the cost sharing payment that is not timely made been an amount of tax imposed by this title and had the last date prescribed for payment been the due date of the electing corporations[1] return (determined without regard to any extension thereof). The amount by which a cost sharing payment determined under subparagraph (C)(i)(I) is increased by reason of the preceding sentence shall not be treated as a cost sharing payment or as interest. If failure to make timely payment is due in whole or in part to fraud or willful neglect, the electing corporation shall be deemed to have revoked the election made under subparagraph (A) on the first day of the taxable year for which the cost sharing payment was required.

(b) For purposes of this title, any tax of a foreign country or possession of the United States which is paid or accrued with respect to the payment or receipt of a cost sharing payment determined under subparagraph (C)(i)(I) or of an amount of increase referred to in subparagraph (C)(i)(III)(a) shall not be treated as income, war profits, or excess profits taxes paid or accrued to a foreign country or possession of the United States, and no deduction shall be allowed under this title with respect to any amounts of such tax so paid or accrued.

(IV) Special rules

(a) The amount of the cost sharing payment determined under subparagraph (C)(i)(I), and any increase in the amount thereof in accordance with subparagraph (C)(i)(III)(a), shall not be treated as income of the recipient, but shall reduce the amount of the deductions (and the amount of reductions in earnings and profits) otherwise allowable to the appropriate domestic member or members (other than an electing corporation) of the affiliated group, or, if there is no such domestic member, to the foreign member or members of such affiliated group as the Secretary may provide under regulations.

(b) If an election of this method is in effect, the electing corporation shall determine its intercompany pricing under the appropriate section 482 method, provided, however, that an electing corporation shall not be denied use of the resale price method for purposes of such intercompany pricing merely because the reseller adds more than an insubstantial amount to the value of the product by the use of intangible property.

(c) The amount of qualified research expenses, within the meaning of section 41, of any member of the controlled group of corporations (as defined in section 41(f)) of which the electing corporation is a member shall not be affected by the cost sharing payment required under this method.

(ii) Profit split

(I) General rule

If an election of this method is in effect, the electing corporation's taxable income derived from the active conduct of a trade or business in a possession with respect to units of a product produced or type of service rendered, in whole or in part, by the electing corporation shall be equal to 50 percent of the combined taxable income of the affiliated group (other than foreign affiliates) derived from covered sales of units of the product produced or type of service rendered, in whole or in part, by the electing corporation in a possession.

(II) Computation of combined taxable income

Combined taxable income shall be computed separately for each product produced or type of service rendered, in whole or in part, by the electing corporation in a possession. Combined taxable income shall be computed (notwithstanding any provision to the contrary) for each such product or type of service rendered by deducting from the gross income of the affiliated group (other than foreign affiliates) derived from covered sales of such product or type of service

[1] So in original. Probably should be ''corporation's''.

all expenses, losses, and other deductions properly apportioned or allocated to gross income from such sales or services, and a ratable part of all expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income, which are incurred by the affiliated group (other than foreign affiliates). Notwithstanding any other provision to the contrary, in computing the combined taxable income for each such product or type of service rendered, the research, development, and experimental costs, expenses and related deductions for the taxable year which would otherwise be apportioned or allocated to the gross income of the affiliated group (other than foreign affiliates) derived from covered sales of such product produced or type of service rendered, in whole or in part, by the electing corporation in a possession, shall not be less than the same proportion of the amount of the share of product area research determined under subparagraph (C)(i)(I) (without regard to the third and fourth sentences thereof, but substituting ''120 percent'' for ''110 percent'' in the second sentence thereof) in the product area which includes such product or type of service, that such gross income from the product or type of service bears to such gross income from all products and types of services, within such product area, produced or rendered, in whole or part, by the electing corporation in a possession.

(III) Division of combined taxable income

50 percent of the combined taxable income computed as provided in subparagraph (C)(ii)(II) shall be allocated to the electing corporation. Combined taxable income, computed without regard to the last sentence of subparagraph (C)(ii)(II), less the amount allocated to the electing corporation under the preceding sentence, shall be allocated to the appropriate domestic member or members (other than any electing corporation) of the affiliated group and shall be treated as income from sources within the United States, or, if there is no such domestic member, to a foreign member or members of such affiliated group as the Secretary may provide under regulations.

(IV) Covered sales

For purposes of this paragraph, the term ''covered sales'' means sales by members of the affiliated group (other than foreign affiliates) to persons who are not members of the affiliated group or to foreign affiliates.

(D) Unrelated person

For purposes of this paragraph, the term ''unrelated person'' means any person other than a person related within the meaning of paragraph (3)(D) to the electing corporation.

(E) Electing corporation

For purposes of this subsection, the term ''electing corporation'' means a domestic corporation for which an election under this section is in effect.

(F) Time and manner of election; revocation

(i) In general

An election under subparagraph (A) to use one of the methods under subparagraph (C) shall be made only on or before the due date prescribed by law (including extensions) for filing the tax return of the electing corporation for its first taxable year beginning after December 31, 1982. If an election of one of such methods is made, such election shall be binding on the electing corporation and such method must be used for each taxable year thereafter until such election is revoked by the electing corporation under subparagraph (F)(iii). If any such election is revoked by the electing corporation under subparagraph (F)(iii), such electing corporation may make a subsequent election under subparagraph (A) only with the consent of the Secretary.

(ii) Manner of making election

An election under subparagraph (A) to use one of the methods under subparagraph (C) shall be made by filing a statement to such effect with the return referred to in subparagraph (F)(i) or in such other manner as the Secretary may prescribe by regulations.

(iii) Revocation

(I) Except as provided in subparagraph (F)(iii)(II), an election may be revoked for any taxable year only with the consent of the Secretary.

(II) An election shall be deemed revoked for the year in which the electing corporation is deemed to have revoked such election under subparagraph (B)(i) or (C)(i)(III)(a).

(iv) Aggregation

(I) Where more than one electing corporation in the affiliated group produces any product or renders any services in the same product area, all such electing corporations must elect to compute their taxable income under the same method under subparagraph (C).

(II) All electing corporations in the same affiliated group that produce any products or render any services in the same product area may elect, subject to such terms and conditions as the Secretary may prescribe by regulations, to compute their taxable income from export sales under a different method from that used for all other sales and services. For this purpose, export sales means all sales by the electing corporation of products to foreign persons for use or consumption outside the United States and its possessions, provided such products are manufactured or produced in the possession within the meaning of subsection (d)(1)(A) of section 954, and further pro-

vided (except to the extent otherwise provided by regulations) the income derived by such foreign person on resale of such products (in the same state or in an altered state) is not included in foreign base company income for purposes of section 954(a).

(III) All members of an affiliated group must consent to an election under this subsection at such time and in such manner as shall be prescribed by the Secretary by regulations.

(6) Treatment of certain sales made after July 1, 1982

(A) In general

For purposes of this section, in the case of a disposition of intangible property made by a corporation after July 1, 1982, any gain or loss from such disposition shall be treated as gain or loss from sources within the United States to which paragraph (5) does not apply.

(B) Exception

Subparagraph (A) shall not apply to any disposition by a corporation of intangible property if such disposition is to a person who is not a related person to such corporation.

(C) Paragraph does not affect eligibility

This paragraph shall not apply for purposes of determining whether the corporation meets the requirements of subsection (a)(2).

(7) Section 864(e)(1) not to apply

This subsection shall be applied as if section 864(e)(1) (relating to treatment of affiliated groups) had not been enacted.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including rules for the application of this subsection to income from leasing of products to unrelated persons.

(i) Definitions and special rules relating to limitations of subsection (a)(4)

(1) Qualified possession wages

For purposes of this section—

(A) In general

The term ''qualified possession wages'' means wages paid or incurred by the possession corporation during the taxable year in connection with the active conduct of a trade or business within a possession of the United States to any employee for services performed in such possession, but only if such services are performed while the principal place of employment of such employee is within such possession.

(B) Limitation on amount of wages taken into account

(i) In general

The amount of wages which may be taken into account under subparagraph (A) with respect to any employee for any taxable year shall not exceed 85 percent of the contribution and benefit base determined under section 230 of the Social Security Act for the calendar year in which such taxable year begins.

(ii) Treatment of part-time employees, etc.

If—

(I) any employee is not employed by the possession corporation on a substantially full-time basis at all times during the taxable year, or

(II) the principal place of employment of any employee with the possession corporation is not within a possession at all times during the taxable year,

the limitation applicable under clause (i) with respect to such employee shall be the appropriate portion (as determined by the Secretary) of the limitation which would otherwise be in effect under clause (i).

(C) Treatment of certain employees

The term ''qualified possession wages'' shall not include any wages paid to employees who are assigned by the employer to perform services for another person, unless the principal trade or business of the employer is to make employees available for temporary periods to other persons in return for compensation. All possession corporations treated as 1 corporation under paragraph (5) shall be treated as 1 employer for purposes of the preceding sentence.

(D) Wages

(i) In general

Except as provided in clause (ii), the term ''wages'' has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section). For purposes of the preceding sentence, such subsection (b) shall be applied as if the term ''United States'' included all possessions of the United States.

(ii) Special rule for agricultural labor and railway labor

In any case to which subparagraph (A) or (B) of paragraph (1) of section 51(h) applies, the term ''wages'' has the meaning given to such term by section 51(h)(2).

(2) Allocable employee fringe benefit expenses

(A) In general

The allocable employee fringe benefit expenses of any possession corporation for any taxable year is an amount which bears the same ratio to the amount determined under subparagraph (B) for such taxable year as—

(i) the aggregate amount of the possession corporation's qualified possession wages for such taxable year, bears to

(ii) the aggregate amount of the wages paid or incurred by such possession corporation during such taxable year.

In no event shall the amount determined under the preceding sentence exceed 15 percent of the amount referred to in clause (i).

(B) Expenses taken into account

For purposes of subparagraph (A), the amount determined under this subparagraph

for any taxable year is the aggregate amount allowable as a deduction under this chapter to the possession corporation for such taxable year with respect to—

(i) employer contributions under a stock bonus, pension, profit-sharing, or annuity plan,

(ii) employer-provided coverage under any accident or health plan for employees, and

(iii) the cost of life or disability insurance provided to employees.

Any amount treated as wages under paragraph (1)(D) shall not be taken into account under this subparagraph.

(3) Treatment of possession taxes

(A) Amount of credit for possession corporations not using profit split

(i) In general

For purposes of subsection (a)(4)(A)(iii), the amount of the qualified possession income taxes for any taxable year allocable to nonsheltered income shall be an amount which bears the same ratio to the possession income taxes for such taxable year as—

(I) the increase in the tax liability of the possession corporation under this chapter for the taxable year by reason of subsection (a)(4)(A) (without regard to clause (iii) thereof), bears to

(II) the tax liability of the possession corporation under this chapter for the taxable year determined without regard to the credit allowable under this section.

(ii) Limitation on amount of taxes taken into account

Possession income taxes shall not be taken into account under clause (i) for any taxable year to the extent that the amount of such taxes exceeds 9 percent of the amount of the taxable income for such taxable year.

(B) Deduction for possession corporations using profit split

Notwithstanding subsection (c), if a possession corporation is not described in subsection (a)(4)(A)(iii) for the taxable year, such possession corporation shall be allowed a deduction for such taxable year in an amount which bears the same ratio to the possession income taxes for such taxable year as—

(i) the increase in the tax liability of the possession corporation under this chapter for the taxable year by reason of subsection (a)(4)(A), bears to

(ii) the tax liability of the possession corporation under this chapter for the taxable year determined without regard to the credit allowable under this section.

In determining the credit under subsection (a) and in applying the preceding sentence, taxable income shall be determined without regard to the preceding sentence.

(C) Possession income taxes

For purposes of this paragraph, the term ''possession income taxes'' means any taxes of a possession of the United States which are treated as not being income, war profits, or excess profits taxes paid or accrued to a possession of the United States by reason of subsection (c).

(4) Depreciation rules

For purposes of this section—

(A) Depreciation allowances

The term ''depreciation allowances'' means the depreciation deductions allowable under section 167 to the possession corporation.

(B) Categories of property

(i) Qualified tangible property

The term ''qualified tangible property'' means any tangible property used by the possession corporation in a possession of the United States in the active conduct of a trade or business within such possession.

(ii) Short-life qualified tangible property

The term ''short-life qualified tangible property'' means any qualified tangible property to which section 168 applies and which is 3-year property or 5-year property for purposes of such section.

(iii) Medium-life qualified tangible property

The term ''medium-life qualified tangible property'' means any qualified tangible property to which section 168 applies and which is 7-year property or 10-year property for purposes of such section.

(iv) Long-life qualified tangible property

The term ''long-life qualified tangible property'' means any qualified tangible property to which section 168 applies and which is not described in clause (ii) or (iii).

(v) Transitional rule

In the case of any qualified tangible property to which section 168 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applies, any reference in this paragraph to section 168 shall be treated as a reference to such section as so in effect.

(5) Election to compute credit on consolidated basis

(A) In general

Any affiliated group may elect to treat all possession corporations which would be members of such group but for section 1504(b)(3) or (4) as 1 corporation for purposes of this section. The credit determined under this section with respect to such 1 corporation shall be allocated among such possession corporations in such manner as the Secretary may prescribe.

(B) Election

An election under subparagraph (A) shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.

(6) Possession corporation

The term ''possession corporation'' means a domestic corporation for which the election provided in subsection (a) is in effect.

(j) Termination

(1) In general

Except as otherwise provided in this subsection, this section shall not apply to any taxable year beginning after December 31, 1995.

(2) Transition rules for active business income credit

Except as provided in paragraph (3)—

(A) Economic activity credit

In the case of an existing credit claimant—

(i) with respect to a possession other than Puerto Rico, and

(ii) to which subsection (a)(4)(B) does not apply,

the credit determined under subsection (a)(1)(A) shall be allowed for taxable years beginning after December 31, 1995, and before January 1, 2002.

(B) Special rule for reduced credit

(i) In general

In the case of an existing credit claimant to which subsection (a)(4)(B) applies, the credit determined under subsection (a)(1)(A) shall be allowed for taxable years beginning after December 31, 1995, and before January 1, 1998.

(ii) Election irrevocable after 1997

An election under subsection (a)(4)(B)(iii) which is in effect for the taxpayer's last taxable year beginning before 1997 may not be revoked unless it is revoked for the taxpayer's first taxable year beginning in 1997 and all subsequent taxable years.

(C) Economic activity credit for Puerto Rico

For economic activity credit for Puerto Rico, see section 30A.

(3) Additional restricted credit

(A) In general

In the case of an existing credit claimant—

(i) the credit under subsection (a)(1)(A) shall be allowed for the period beginning with the first taxable year after the last taxable year to which subparagraph (A) or (B) of paragraph (2), whichever is appropriate, applied and ending with the last taxable year beginning before January 1, 2006, except that

(ii) the aggregate amount of taxable income taken into account under subsection (a)(1)(A) for any such taxable year shall not exceed the adjusted base period income of such claimant.

(B) Coordination with subsection (a)(4)

The amount of income described in subsection (a)(1)(A) which is taken into account in applying subsection (a)(4) shall be such income as reduced under this paragraph.

(4) Adjusted base period income

For purposes of paragraph (3)—

(A) In general

The term ''adjusted base period income'' means the average of the inflation-adjusted possession incomes of the corporation for each base period year.

(B) Inflation-adjusted possession income

For purposes of subparagraph (A), the inflation-adjusted possession income of any corporation for any base period year shall be an amount equal to the sum of—

(i) the possession income of such corporation for such base period year, plus

(ii) such possession income multiplied by the inflation adjustment percentage for such base period year.

(C) Inflation adjustment percentage

For purposes of subparagraph (B), the inflation adjustment percentage for any base period year means the percentage (if any) by which—

(i) the CPI for 1995, exceeds

(ii) the CPI for the calendar year in which the base period year for which the determination is being made ends.

For purposes of the preceding sentence, the CPI for any calendar year is the CPI (as defined in section 1(f)(5)) for such year under section 1(f)(4).

(D) Increase in inflation adjustment percentage for growth during base years

The inflation adjustment percentage (determined under subparagraph (C) without regard to this subparagraph) for each of the 5 taxable years referred to in paragraph (5)(A) shall be increased by—

(i) 5 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1995;

(ii) 10.25 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1994;

(iii) 15.76 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1993;

(iv) 21.55 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1992; and

(v) 27.63 percentage points in the case of a taxable year ending during the 1-year period ending on October 13, 1991.

(5) Base period year

For purposes of this subsection—

(A) In general

The term ''base period year'' means each of 3 taxable years which are among the 5 most recent taxable years of the corporation ending before October 14, 1995, determined by disregarding—

(i) one taxable year for which the corporation had the largest inflation-adjusted possession income, and

(ii) one taxable year for which the corporation had the smallest inflation-adjusted possession income.

(B) Corporations not having significant possession income throughout 5-year period

(i) In general

If a corporation does not have significant possession income for each of the

most recent 5 taxable years ending before October 14, 1995, then, in lieu of applying subparagraph (A), the term ''base period year'' means only those taxable years (of such 5 taxable years) for which the corporation has significant possession income; except that, if such corporation has significant possession income for 4 of such 5 taxable years, the rule of subparagraph (A)(ii) shall apply.

(ii) Special rule

If there is no year (of such 5 taxable years) for which a corporation has significant possession income—

(I) the term ''base period year'' means the first taxable year ending on or after October 14, 1995, but

(II) the amount of possession income for such year which is taken into account under paragraph (4) shall be the amount which would be determined if such year were a short taxable year ending on September 30, 1995.

(iii) Significant possession income

For purposes of this subparagraph, the term ''significant possession income'' means possession income which exceeds 2 percent of the possession income of the taxpayer for the taxable year (of the period of 6 taxable years ending with the first taxable year ending on or after October 14, 1995) having the greatest possession income.

(C) Election to use one base period year

(i) In general

At the election of the taxpayer, the term ''base period year'' means—

(I) only the last taxable year of the corporation ending in calendar year 1992, or

(II) a deemed taxable year which includes the first ten months of calendar year 1995.

(ii) Base period income for 1995

In determining the adjusted base period income of the corporation for the deemed taxable year under clause (i)(II), the possession income shall be annualized and shall be determined without regard to any extraordinary item.

(iii) Election

An election under this subparagraph by any possession corporation may be made only for the corporation's first taxable year beginning after December 31, 1995, for which it is a possession corporation. The rules of subclauses (II) and (III) of subsection (a)(4)(B)(iii) shall apply to the election under this subparagraph.

(D) Acquisitions and dispositions

Rules similar to the rules of subparagraphs (A) and (B) of section 41(f)(3) shall apply for purposes of this subsection.

(6) Possession income

For purposes of this subsection, the term ''possession income'' means, with respect to any possession, the income referred to in subsection (a)(1)(A) determined with respect to that possession. In no event shall possession income be treated as being less than zero.

(7) Short years

If the current year or a base period year is a short taxable year, the application of this subsection shall be made with such annualizations as the Secretary shall prescribe.

(8) Special rules for certain possessions

(A) In general

In the case of an existing credit claimant with respect to an applicable possession, this section (other than the preceding paragraphs of this subsection) shall apply to such claimant with respect to such applicable possession for taxable years beginning after December 31, 1995, and before January 1, 2006.

(B) Applicable possession

For purposes of this paragraph, the term ''applicable possession'' means Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(9) Existing credit claimant

For purposes of this subsection—

(A) In general

The term ''existing credit claimant'' means a corporation—

(i)(I) which was actively conducting a trade or business in a possession on October 13, 1995, and

(II) with respect to which an election under this section is in effect for the corporation's taxable year which includes October 13, 1995, or

(ii) which acquired all of the assets of a trade or business of a corporation which—

(I) satisfied the requirements of subclause (I) of clause (i) with respect to such trade or business, and

(II) satisfied the requirements of subclause (II) of clause (i).

(B) New lines of business prohibited

If, after October 13, 1995, a corporation which would (but for this subparagraph) be an existing credit claimant adds a substantial new line of business (other than in an acquisition described in subparagraph (A)(ii)), such corporation shall cease to be treated as an existing credit claimant as of the close of the taxable year ending before the date of such addition.

(C) Binding contract exception

If, on October 13, 1995, and at all times thereafter, there is in effect with respect to a corporation a binding contract for the acquisition of assets to be used in, or for the sale of assets to be produced from, a trade or business, the corporation shall be treated for purposes of this paragraph as actively conducting such trade or business on October 13, 1995. The preceding sentence shall not apply if such trade or business is not actively conducted before January 1, 1996.

(10) Separate application to each possession

For purposes of determining—

(A) whether a taxpayer is an existing credit claimant, and

(B) the amount of the credit allowed under this section,

this subsection (and so much of this section as relates to this subsection) shall be applied separately with respect to each possession.

(Added Pub. L. 94–455, title X, § 1051(b), Oct. 4, 1976, 90 Stat. 1643; amended Pub. L. 94–455, title XIX, § 1901(b)(37)(B), Oct. 4, 1976, 90 Stat. 1803; Pub. L. 95–600, title VII, § 701(u)(11)(A), (B), Nov. 6, 1978, 92 Stat. 2917; Pub. L. 97–248, title II, § 201(d)(8)(B), formerly § 201(c)(8)(B), § 213(a), Sept. 3, 1982, 96 Stat. 420, 452, renumbered § 201(d)(8)(B), Pub. L. 97–448, title III, § 306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 98–369, div. A, title IV, § 474(r)(22), title VII, § 712(g), title VIII, § 801(d)(11), July 18, 1984, 98 Stat. 843, 947, 997; Pub. L. 99–499, title V, § 516(b)(1)(B), Oct. 17, 1986, 100 Stat. 1770; Pub. L. 99–514, title II, § 231(d)(3)(G), title VII, § 701(e)(4)(I), title XII, §§ 1231(a)–(d), (f), 1275(a)(1), title XVIII, § 1812(c)(4)(C), Oct. 22, 1986, 100 Stat. 2179, 2343, 2561–2563, 2598, 2835; Pub. L. 100–647, title I, §§ 1002(h)(3), 1012(h)(2)(B), (j), (n)(4), (5), title VI, § 6132(a), Nov. 10, 1988, 102 Stat. 3370, 3502, 3512, 3515, 3721; Pub. L. 101–382, title II, § 227(a), Aug. 20, 1990, 104 Stat. 661; Pub. L. 101–508, title XI, § 11704(a)(11), Nov. 5, 1990, 104 Stat. 1388–518; Pub. L. 103–66, title XIII, § 13227(a), (b), Aug. 10, 1993, 107 Stat. 489, 490; Pub. L. 104–188, title I, §§ 1601(a), 1704(t)(37), (80), Aug. 20, 1996, 110 Stat. 1827, 1889, 1891; Pub. L. 108–357, title IV, § 402(b)(2), Oct. 22, 2004, 118 Stat. 1492; Pub. L. 110–172, § 11(g)(12), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsecs. (d)(3)(B) and (i)(4)(B)(v), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Caribbean Basin Economic Recovery Act, referred to in subsec. (d)(4)(A)(i), (B), is title II of Pub. L. 98–67, Aug. 5, 1983, 97 Stat. 384, which is classified principally to chapter 15 (§ 2701 et seq.) of Title 19, Customs Duties. Section 212 of that Act is classified to section 2702 of Title 19. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 19 and Tables.

The date of the enactment of this subparagraph, referred to in subsec. (h)(3)(A), means the date of enactment of Pub. L. 97–248, which was approved Sept. 3, 1982.

The date of the enactment of this clause, referred to in subsec. (h)(5)(B)(iii)(I), (iv), means the date of enactment of Pub. L. 97–248, which was approved Sept. 3, 1982.

Section 230 of the Social Security Act, referred to in subsec. (i)(1)(B)(i), is classified to section 430 of Title 42, The Public Health and Welfare.

AMENDMENTS

2007—Subsec. (f)(2)(B). Pub. L. 110–172 struck out ''FSC or'' before ''former FSC''.

2004—Subsec. (a)(2)(A). Pub. L. 108–357 substituted ''subsections (f) and (g) of section 904'' for ''section 904(f)''.

1996—Subsec. (a)(4)(A)(ii)(I). Pub. L. 104–188, § 1704(t)(80), which directed that subcl. (I) be amended by substituting ''depreciation'' for ''deprecation'', could not be executed, because the word ''deprecation'' did not appear in text.

Subsec. (b). Pub. L. 104–188, § 1704(t)(37), substituted ''subparagraphs (D)(ii)'' for ''subparagraphs (D)(ii)(I)''.

Subsec. (j). Pub. L. 104–188, § 1601(a), added subsec. (j).

1993—Subsec. (a)(1). Pub. L. 103–66, § 13227(a)(1), substituted ''Except as otherwise provided in this section'' for ''Except as provided in paragraph (3)''.

Subsec. (a)(4). Pub. L. 103–66, § 13227(a)(2), added par. (4).

Subsec. (i). Pub. L. 103–66, § 13227(b), added subsec. (i).

1990—Subsec. (d)(4)(D). Pub. L. 101–382 added subpar. (D).

Subsec. (e)(1). Pub. L. 101–508 substituted ''subsection (a)(2)'' for ''subsection (a)(1)'' wherever appearing.

1988—Subsec. (d)(3)(B). Pub. L. 100–647, § 1012(j), inserted ''(as in effect on the day before the date of the enactment of the Tax Reform Act of 1986)'' after ''section 957(c)''.

Subsec. (d)(4)(A)(ii). Pub. L. 100–647, § 1012(n)(5)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''in accordance with a specific authorization granted by the Government Development Bank for Puerto Rico pursuant to regulations issued by the Secretary of the Treasury of Puerto Rico.''

Subsec. (d)(4)(B). Pub. L. 100–647, § 6132(a), inserted ''and the Virgin Islands'' after ''274(h)(6)(A)''.

Subsec. (d)(4)(C)(i), (ii). Pub. L. 100–647, § 1012(n)(5)(B), substituted ''Commissioner of Financial Institutions of Puerto Rico'' for ''Secretary of the Treasury of Puerto Rico''.

Subsec. (h)(5)(C)(i)(I). Pub. L. 100–647, § 1012(n)(4), amended directory language of Pub. L. 99–514, § 1231(a)(1), see 1986 Amendment note below.

Subsec. (h)(5)(C)(i)(IV)(c). Pub. L. 100–647, § 1002(h)(3), substituted ''section 41'' and ''section 41(f)'' for ''section 30'' and ''section 30(f)'', respectively.

Subsec. (h)(7), (8). Pub. L. 100–647, § 1012(h)(2)(B), added par. (7) and redesignated former par. (7) as (8).

1986—Subsec. (a)(2)(B). Pub. L. 99–514, § 1231(d)(1), substituted ''75 percent'' for ''65 percent''.

Subsec. (a)(2)(C). Pub. L. 99–514, § 1231(d)(2), struck out subpar. (C), transitional rule, which read as follows: ''In applying subparagraph (B) with respect to taxable years beginning after December 31, 1982, and before January 1, 1985, the following percentage shall be substituted for '65 percent':

''For taxable years beginning in calendar year:	**The percentage is:**
1983	55
1984	60.''

Subsec. (a)(3). Pub. L. 99–499 in par. (3), as amended by Pub. L. 99–514, added subpar. (A) and redesignated former subpars. (A) to (C) as (B) to (D), respectively.

Pub. L. 99–514, § 701(e)(4)(I), struck out subpar. (A) which read ''section 56 (relating to corporate minimum tax),'', and redesignated subpars. (B), (C), and (E) as (A), (B), and (C), respectively.

Subsec. (b). Pub. L. 99–514, § 1231(b), inserted at end ''This subsection shall not apply to any amount described in subsection (a)(1)(A)(i) received from a person who is not a related person (within the meaning of subsection (h)(3) but without regard to subparagraphs (D)(ii)(I) and (E)(i) thereof) with respect to the domestic corporation.''

Subsec. (d)(1). Pub. L. 99–514, § 1275(a)(1), substituted ''and the Virgin Islands'' for '', but does not include the Virgin Islands of the United States''.

Subsec. (d)(4). Pub. L. 99–514, § 1231(c), added par. (4).

Subsec. (h)(3)(D)(ii). Pub. L. 99–514, § 1812(c)(4)(C), amended cl. (ii) generally. Prior to amendment, cl. (ii), special rules, read as follows: ''For purposes of clause (i)—

''(I) section 267(b) and section 707(b)(1) shall be applied by substituting '10 percent' for '50 percent', and

''(II) section 267(b)(3) shall be applied without regard to whether a person was a personal holding company or a foreign personal holding company.''

Subsec. (h)(5)(C)(i)(I). Pub. L. 99–514, § 1231(a)(1), as amended by Pub. L. 100–647, § 1012(n)(4), in introductory provisions, substituted ''the same proportion of 110 percent of the cost'' for ''the same proportion of the cost'', and inserted at end of material relating to payment of

cost sharing ''In the case of intangible property described in subsection (h)(3)(B)(i) which the electing corporation is treated as owning under subclause (II), in no event shall the payment required under this subclause be less than the inclusion or payment which would be required under section 367(d)(2)(A)(ii) or section 482 if the electing corporation were a foreign corporation.''

Subsec. (h)(5)(C)(i)(I)(a). Pub. L. 99–514, §231(d)(3)(G), substituted ''section 41(b)'' for ''section 30(b)''.

Subsec. (h)(5)(C)(ii)(II). Pub. L. 99–514, §1231(f), substituted ''all products and types of services, within such product area, produced or rendered'' for ''all products produced and types of service rendered''.

Pub. L. 99–514, §1231(a)(2), substituted ''the third and fourth sentences thereof, but substituting '120 percent' for '110 percent' in the second sentence thereof)'' for ''the third sentence thereof)''.

1984—Subsec. (a)(2)(C). Pub. L. 98–369, §712(g), substituted in table heading ''The percentage is'' for ''The percentage tax is''.

Subsec. (f). Pub. L. 98–369, §801(d)(11), amended subsec. (f) generally, substituting in heading ''Limitation on credit for DISC's and FSC's'' for ''DISC or former DISC corporation ineligible for credit'', and in text striking out reference to section 992(a) and inserting provision disallowing a credit to a corporation for a taxable year in which it owns at any time stock in a FSC or former FSC.

Subsec. (h)(5)(C)(i)(I)(a). Pub. L. 98–369, §474(r)(22)(A), substituted ''section 30(b)'' for ''section 44F(b)''.

Subsec. (h)(5)(C)(i)(IV)(c). Pub. L. 98–369, §474(r)(22)(B), substituted ''section 30'' for ''section 44F'' and ''section 30(f)'' for ''section 44F(f)''.

1982—Subsec. (a)(2)(B). Pub. L. 97–248, §213(a)(1)(A), substituted ''65 percent'' for ''50 percent''.

Subsec. (a)(2)(C). Pub. L. 97–248, §213(a)(1)(B), added subpar. (C).

Subsec. (a)(3)(A). Pub. L. 97–248, §201(d)(8)(B), formerly §201(c)(8)(B), substituted ''(relating to corporate minimum tax)'' for ''(relating to minimum tax)''.

Subsec. (h). Pub. L. 97–248, §213(a)(2), added subsec. (h).

1978—Subsec. (a). Pub. L. 95–600, §701(u)(11)(A), reworked provisions of par. (1) into introductory text, substituting reference to par. (3) for reference to par. (2), and subpars. (A) and (B), inserted introductory text of par. (2), redesignated former subpars. (A) and (B) of par. (1) as subpars. (A) and (B) of par. (2), and redesignated former par. (2) as (3).

Subsec. (d). Pub. L. 95–600, §701(u)(11)(B), substituted in heading ''Definitions and special rules'' for ''Definitions'' and added par. (3).

1976—Subsec. (a)(2)(D). Pub. L. 94–455, §1901(b)(37)(B), struck out subpar. (D) relating to war loss recoveries.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to losses for taxable years beginning after Dec. 31, 2006, see section 402(c) of Pub. L. 108–357, set out as a note under section 535 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1601(a) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, except as otherwise provided, see section 1601(c) of Pub. L. 104–188, set out as an Effective Date note under section 30A of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1993, see section 13227(f) of Pub. L. 103–66, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 227(b) of Pub. L. 101–382 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to calendar years after 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1002(h)(3) and 1012(h)(2)(B), (j), (n)(4), (5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6132(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall apply to investments made after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 231(d)(3)(G) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1985, see section 231(g) of Pub. L. 99–514, set out as a note under section 41 of this title.

Amendment by section 701(e)(4)(I) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99–514, set out as an Effective Date note under section 55 of this title.

Section 1231(g) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1012(n)(1)–(3), Nov. 10, 1988, 102 Stat. 3514, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 367 and 482 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL RULE FOR TRANSFER OF INTANGIBLES.—

''(A) IN GENERAL.—The amendments made by subsection (e) [amending sections 367 and 482 of this title] shall apply to taxable years beginning after December 31, 1986, but only with respect to transfers after November 16, 1985, or licenses granted after such date (or before such date with respect to property not in existence or owned by the taxpayer on such date). In the case of any transfer (or license) which is not to a foreign person, the preceding sentence shall be applied by substituting 'August 16, 1986' for 'November 16, 1985'.

''(B) SPECIAL RULE FOR SECTION 936.—For purposes of section 936(h)(5)(C) of the Internal Revenue Code of 1986 the amendments made by subsection (e) shall apply to taxable years beginning after December 31, 1986, without regard to when the transfer (or license), if any, was made.

''(3) SUBSECTION (f).—The amendment made by subsection (f) [amending this section] shall apply to taxable years beginning after December 31, 1982.

''(4) TRANSITIONAL RULE.—In the case of a corporation—

''(A) with respect to which an election under section 936 of the Internal Revenue Code of 1986 (relating to possessions tax credit) is in effect,

''(B) which produced an end-product form in Puerto Rico on or before September 3, 1982,

''(C) which began manufacturing a component of such product in Puerto Rico in its taxable year beginning in 1983, and

''(D) with respect to which a Puerto Rican tax exemption was granted on June 27, 1983,

such corporation shall treat such component as a separate product for such taxable year for purposes of determining whether such corporation had a significant business presence in Puerto Rico with respect to such product and its income with respect to such product.

''(5) TRANSITIONAL RULE FOR INCREASE IN GROSS INCOME TEST.—

''(A) IN GENERAL.—If—

''(i) a corporation fails to meet the requirements of subparagraph (B) of section 936(a)(2) of the Internal Revenue Code of 1986 (as amended by subsection (d)(1)) for any taxable year beginning in 1987 or 1988,

''(ii) such corporation would have met the requirements of such subparagraph (B) if such subparagraph had been applied without regard to the amendment made by subsection (d)(1), and

''(iii) 75 percent or more of the gross income of such corporation for such taxable year (or, in the case of a taxable year beginning in 1988, for the period consisting of such taxable year and the preceding taxable year) was derived from the active conduct of a trade or business within a possession of the United States, such corporation shall nevertheless be treated as meeting the requirements of such subparagraph (B) for such taxable year if it elects to reduce the amount of the qualified possession source investment income for the taxable year by the amount of the shortfall determined under subparagraph (B) of this paragraph.

''(B) DETERMINATION OF SHORTFALL.—The shortfall determined under this subparagraph for any taxable year is an amount equal to the excess of—

''(i) 75 percent of the gross income of the corporation for the 3-year period (or part thereof) referred to in section 936(a)(2)(A) of such Code, over

''(ii) the amount of the gross income of such corporation for such period (or part thereof) which was derived from the active conduct of a trade or business within a possession of the United States.

''(C) SPECIAL RULE.—Any income attributable to the investment of the amount not treated as qualified possession source investment income under subparagraph (A) shall not be treated as qualified possession source investment income for any taxable year.''

Amendment by section 1275(a)(1) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

Amendment by section 1812(c)(4)(C) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by Pub. L. 99–499 applicable to taxable years beginning after Dec. 31, 1986, see section 516(c) of Pub. L. 99–499, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(22) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 712(g) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 801(d)(11) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 201(d)(8)(B) of Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97–248, set out as a note under section 5 of this title.

Section 213(e) of Pub. L. 97–248, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 246, 367, and 934 of this title] shall apply to taxable years beginning after December 31, 1982.

''(2) CERTAIN SALES MADE AFTER JULY 1, 1982.—Paragraph (6) of section 936(h) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], and so much of section 934 to which such paragraph applies by reason of section 934(e)(4) of such Code, shall apply to taxable years ending after July 1, 1982.

''(3) CERTAIN TRANSFERS OF INTANGIBLES MADE AFTER AUGUST 14, 1982.—Subsection (d) [amending section 367 of this title] shall apply to taxable years ending after August 14, 1982.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(u)(11)(C) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this paragraph [amending this section] shall apply as if included in section 936 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] at the time of its addition by section 1051(b) of the Tax Reform Act of 1976 [Oct. 4, 1976].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1975, except that qualified possession source investment income as defined in subsec. (d)(2) of this section shall include income from any source outside the United States if the taxpayer establishes to the satisfaction of the Secretary of the Treasury or his delegate that the income from such sources was earned before Oct. 1, 1976, see section 1051(i) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 27 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(I) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

REPORT ON POSSESSIONS CORPORATIONS

Section 441(a) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–647, title VI, § 6252(b)(1), Nov. 10, 1988, 102 Stat. 3752, which directed Secretary of the Treasury to submit a report to Congress each fourth calendar year on the operation and effect of sections 936 and 934(b) of this title, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 142 of House Document No. 103–7.

§ 937. Residence and source rules involving possessions

(a) Bona fide resident

For purposes of this subpart, section 865(g)(3), section 876, section 881(b), paragraphs (2) and (3) of section 901(b), section 957(c), section 3401(a)(8)(C), and section 7654(a), except as provided in regulations, the term ''bona fide resident'' means a person—

(1) who is present for at least 183 days during the taxable year in Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands, as the case may be, and

(2) who does not have a tax home (determined under the principles of section 911(d)(3) without regard to the second sentence thereof) outside such specified possession during the taxable year and does not have a closer connection (determined under the principles of section 7701(b)(3)(B)(ii)) to the United States or a foreign country than to such specified possession.

For purposes of paragraph (1), the determination as to whether a person is present for any day shall be made under the principles of section 7701(b).

(b) Source rules

Except as provided in regulations, for purposes of this title—

(1) except as provided in paragraph (2), rules similar to the rules for determining whether income is income from sources within the United States or is effectively connected with the conduct of a trade or business within the United States shall apply for purposes of determining whether income is from sources within a possession specified in subsection (a)(1) or effectively connected with the conduct of a trade or business within any such possession, and

(2) any income treated as income from sources within the United States or as effectively connected with the conduct of a trade or business within the United States shall not be treated as income from sources within any such possession or as effectively connected with the conduct of a trade or business within any such possession.

(c) Reporting requirement

(1) In general

If, for any taxable year, an individual takes the position for United States income tax reporting purposes that the individual became, or ceases to be, a bona fide resident of a possession specified in subsection (a)(1), such individual shall file with the Secretary, at such time and in such manner as the Secretary may prescribe, notice of such position.

(2) Transition rule

If, for any of an individual's 3 taxable years ending before the individual's first taxable year ending after the date of the enactment of this subsection, the individual took a position described in paragraph (1), the individual shall file with the Secretary, at such time and in such manner as the Secretary may prescribe, notice of such position.

(Added Pub. L. 108–357, title VIII, § 908(a), Oct. 22, 2004, 118 Stat. 1655.)

REFERENCES IN TEXT

The date of the enactment of this subsection, referred to in subsec. (c)(2), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

EFFECTIVE DATE

Pub. L. 108–357, title VIII, § 908(d), Oct. 22, 2004, 118 Stat. 1657, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 931, 932, 934, 935, 957, and 6688 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004].

''(2) 183-DAY RULE.—Section 937(a)(1) of the Internal Revenue Code of 1986 (as added by this section) shall apply to taxable years beginning after the date of the enactment of this Act.

''(3) SOURCING.—Section 937(b)(2) of such Code (as so added) shall apply to income earned after the date of the enactment of this Act.''

[SUBPART E—REPEALED]

[§§ 941 to 943. Repealed. Pub. L. 108–357, title I, § 101(b)(1), Oct. 22, 2004, 118 Stat. 1423]

Section 941, added Pub. L. 106–519, § 3(b), Nov. 15, 2000, 114 Stat. 2424, related to qualifying foreign trade income.

A prior section 941, acts Aug. 16, 1954, ch. 736, 68A Stat. 293; Oct. 4, 1976, Pub. L. 94–455, title X, § 1053(a), title XIX, § 1906(b)(1)(A), 90 Stat. 1648, 1834, set forth provisions authorizing special deduction for China Trade Act corporations, prior to repeal by Pub. L. 94–455, title X, § 1053(c), (e), Oct. 4, 1976, 90 Stat. 1649, effective with respect to taxable years beginning after Dec. 31, 1977.

Section 942, added Pub. L. 106–519, § 3(b), Nov. 15, 2000, 114 Stat. 2426, defined ''foreign trading gross receipts'' and set forth economic process requirements.

A prior section 942, act Aug. 16, 1954, ch. 736, 68A Stat. 294, disallowed foreign tax credit authorized by section 901 to any corporation organized under the China Trade Act, prior to repeal by Pub. L. 94–455, title X, § 1053(c), (e), Oct. 4, 1976, 90 Stat. 1649, effective with respect to taxable years beginning after Dec. 31, 1977.

Section 943, added Pub. L. 106–519, § 3(b), Nov. 15, 2000, 114 Stat. 2428; amended Pub. L. 107–147, title IV, § 417(14), Mar. 9, 2002, 116 Stat. 56, set forth other definitions and special rules for purposes of this subpart.

A prior section 943, acts Aug. 16, 1954, ch. 736, 68A Stat. 294; Oct. 4, 1976, Pub. L. 94–455, title X, § 1053(b), 90 Stat. 1648, set forth provisions relating to exclusion from gross income of residents of Formosa or Hong Kong of amounts distributed as dividends by China Trade Act corporations, prior to repeal by Pub. L. 94–455, title X, § 1053(c), (e), Oct. 4, 1976, 90 Stat. 1649, effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF REPEAL

Repeal applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

SUBPART F—CONTROLLED FOREIGN CORPORATIONS

Sec.
951. Amounts included in gross income of United States shareholders.
952. Subpart F income defined.
953. Insurance income.
954. Foreign base company income.
955. Withdrawal of previously excluded subpart F income from qualified investment.
956. Investment of earnings in United States property.
[956A. Repealed.]
957. Controlled foreign corporations; United States persons.
958. Rules for determining stock ownership.
959. Exclusion from gross income of previously taxed earnings and profits.
960. Special rules for foreign tax credit.
961. Adjustments to basis of stock in controlled foreign corporations and of other property.

Sec.
962. Election by individuals to be subject to tax at corporate rates.
[963. Repealed.]
964. Miscellaneous provisions.
965. Temporary dividends received deduction.

AMENDMENTS

2004—Pub. L. 108–357, title IV, § 422(c), Oct. 22, 2004, 118 Stat. 1519, added item 965.

1996—Pub. L. 104–188, title I, § 1501(c), Aug. 20, 1996, 110 Stat. 1826, which directed that the analysis for subpart F be amended by striking item 956A, could not be executed, because item 956A ''Earnings invested in excess passive assets'' had been editorially supplied.

1986—Pub. L. 99–514, title XII, § 1221(b)(3)(E), Oct. 22, 1986, 100 Stat. 2553, substituted ''Insurance income'' for ''Income from insurance of United States risks'' in item 953.

1975—Pub. L. 94–12, title VI, § 602(a)(3)(A), (c)(7), (d)(3)(B), Mar. 29, 1975, 89 Stat. 58, 60, 64, struck out existing item 955 and replaced it with an identical item 955 and struck out item 963 ''Receipt of minimum distributions by domestic corporations''.

1962—Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1006, added heading of subpart F, and items 951–964.

§ 951. Amounts included in gross income of United States shareholders

(a) Amounts included

(1) In general

If a foreign corporation is a controlled foreign corporation for an uninterrupted period of 30 days or more during any taxable year, every person who is a United States shareholder (as defined in subsection (b)) of such corporation and who owns (within the meaning of section 958(a)) stock in such corporation on the last day, in such year, on which such corporation is a controlled foreign corporation shall include in his gross income, for his taxable year in which or with which such taxable year of the corporation ends—

(A) the sum of—

(i) his pro rata share (determined under paragraph (2)) of the corporation's subpart F income for such year,

(ii) his pro rata share (determined under section 955(a)(3) as in effect before the enactment of the Tax Reduction Act of 1975) of the corporation's previously excluded subpart F income withdrawn from investment in less developed countries for such year, and

(iii) his pro rata share (determined under section 955(a)(3)) of the corporation's previously excluded subpart F income withdrawn from foreign base company shipping operations for such year; and

(B) 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)).

(2) Pro rata share of subpart F income

The pro rata share referred to in paragraph (1)(A)(i) in the case of any United States shareholder is the amount—

(A) which would have been distributed with respect to the stock which such shareholder owns (within the meaning of section 958(a)) in such corporation if on the last day, in its taxable year, on which the corporation is a controlled foreign corporation it had distributed pro rata to its shareholders an amount (i) which bears the same ratio to its subpart F income for the taxable year, as (ii) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year, reduced by

(B) the amount of distributions received by any other person during such year as a dividend with respect to such stock, but only to the extent of the dividend which would have been received if the distribution by the corporation had been the amount (i) which bears the same ratio to the subpart F income of such corporation for the taxable year, as (ii) the part of such year during which such shareholder did not own (within the meaning of section 958(a)) such stock bears to the entire year.

For purposes of subparagraph (B), any gain included in the gross income of any person as a dividend under section 1248 shall be treated as a distribution received by such person with respect to the stock involved.

(3) Limitation on pro rata share of previously excluded subpart F income withdrawn from investment

For purposes of paragraph (1)(A)(iii), the pro rata share of any United States shareholder of the previously excluded subpart F income of a controlled foreign corporation withdrawn from investment in foreign base company shipping operations shall not exceed an amount—

(A) which bears the same ratio to his pro rata share of such income withdrawn (as determined under section 955(a)(3)) for the taxable year, as

(B) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year.

(b) United States shareholder defined

For purposes of this subpart, the term ''United States shareholder'' means, with respect to any foreign corporation, a United States person (as defined in section 957(c)) who owns (within the meaning of section 958(a)), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.

(c) Coordination with passive foreign investment company provisions

If, but for this subsection, an amount would be included in the gross income of a United States shareholder for any taxable year both under subsection (a)(1)(A)(i) and under section 1293 (relating to current taxation of income from certain passive foreign investment companies), such amount shall be included in the gross income of such shareholder only under subsection (a)(1)(A).

(Added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1006; amended Pub. L. 94–12, title VI, § 602(a)(3)(B), (c)(3), (4), (d)(2), Mar. 29, 1975, 89 Stat. 58, 62; Pub. L. 94–455, title XIX, § 1901(a)(119), Oct. 4, 1976, 90 Stat. 1784; Pub. L. 98–369, div. A, title I, § 132(c)(1), title VIII, § 801(d)(4), July 18, 1984, 98 Stat. 666, 996; Pub. L. 99–514, title XII, § 1235(c), title XVIII, § 1876(c)(2),

Oct. 22, 1986, 100 Stat. 2574, 2898; Pub. L. 100–647, title I, §1012(i)(15), Nov. 10, 1988, 102 Stat. 3510; Pub. L. 103–66, title XIII, §§13231(a), 13232(c), Aug. 10, 1993, 107 Stat. 495, 502; Pub. L. 104–188, title I, §1501(a)(1), Aug. 20, 1996, 110 Stat. 1825; Pub. L. 105–34, title XI, §1112(a)(1), Aug. 5, 1997, 111 Stat. 969; Pub. L. 108–357, title IV, §413(c)(16), Oct. 22, 2004, 118 Stat. 1508; Pub. L. 110–172, §11(g)(13), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

The Tax Reduction Act of 1975, referred to in subsec. (a)(1)(A)(ii), is Pub. L. 94–12, Mar. 29, 1975, 89 Stat. 26, as amended, which was enacted Mar. 29, 1975. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 1 of this title and Tables.

AMENDMENTS

2007—Subsecs. (c), (d). Pub. L. 110–172 redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows:

''(1) IN GENERAL.—The foreign trade income of a FSC and any deductions which are apportioned or allocated to such income shall not be taken into account under this subpart.

''(2) FOREIGN TRADE INCOME.—For purposes of this subsection, the term 'foreign trade income' has the meaning given such term by section 923(b), but does not include section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6)).''

2004—Subsecs. (c) to (f). Pub. L. 108–357 redesignated subsecs. (e) and (f) as (c) and (d), respectively, and struck out former subsecs. (c) and (d), which related to coordination of provisions with election of a foreign investment company to distribute income and coordination with foreign personal holding company provisions, respectively.

1997—Subsec. (a)(2). Pub. L. 105–34 inserted concluding provisions ''For purposes of subparagraph (B), any gain included in the gross income of any person as a dividend under section 1248 shall be treated as a distribution received by such person with respect to the stock involved.''

1996—Subsec. (a)(1)(A) to (C). Pub. L. 104–188 inserted ''and'' at end of subpar. (A), substituted period for ''; and'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''the amount determined under section 956A with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(3)).''

1993—Subsec. (a)(1)(B). Pub. L. 103–66, §13232(c)(1), substituted ''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)); and'' for ''his pro rata share (determined under section 956(a)(2)) of the corporation's increase in earnings invested in United States property for such year (but only to the extent not excluded from gross income under section 959(a)(2)); and''.

Subsec. (a)(1)(C). Pub. L. 103–66, §13231(a), added subpar. (C).

Subsec. (a)(4). Pub. L. 103–66, §13232(c)(2), struck out heading and text of par. (4). Text read as follows: ''For purposes of paragraph (1)(B), the pro rata share of any United States shareholder in the increase of the earnings of a controlled foreign corporation invested in United States property shall not exceed an amount (A) which bears the same ratio to his pro rata share of such increase (as determined under section 956(a)(2)) for the taxable year, as (B) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year.''

1988—Subsec. (b). Pub. L. 100–647 substituted ''section 957(c)'' for ''section 957(d)''.

1986—Subsec. (e)(1). Pub. L. 99–514, §1876(c)(2), struck out last sentence which read as follows: ''For purposes of the preceding sentence, income described in paragraph (2) or (3) of section 921(d) shall be treated as derived from sources within the United States.''

Subsec. (f). Pub. L. 99–514, §1235(c), added subsec. (f).

1984—Subsec. (d). Pub. L. 98–369, §132(c)(1), amended subsec. (d) generally, substituting provision that, if a United States shareholder is required to include in gross income an amount under both subsec. (a)(1)(A)(ii) of this section and section 551(b) of this title, such amount be included only under subsec. (a)(1)(A)(ii) of this section for provision that, if a United States shareholder is subject to tax under section 551(b) of this title, such shareholder not be required to include as gross income any amount under subsec. (a) of this section.

Subsec. (e). Pub. L. 98–369, §801(d)(4), added subsec. (e).

1976—Subsec. (a)(1). Pub. L. 94–455 struck out ''beginning after December 31, 1962'' after ''during any taxable year''.

1975—Subsec. (a)(1)(A)(i). Pub. L. 94–12, §602(a)(3)(B), struck out ''except as provided in section 963,'' before ''his pro rata share''.

Subsec. (a)(1)(A)(ii). Pub. L. 94–12, §602(c)(3), substituted ''(determined under section 955(a)(3) as in effect before the enactment of the Tax Reduction Act of 1975)'' for ''(determined under section 955(a)(3))''.

Subsec. (a)(1)(A)(iii). Pub. L. 94–12, §602(d)(2)(A), added cl. (iii).

Subsec. (a)(3). Pub. L. 94–12, §602(c)(4), (d)(2)(B), substituted ''paragraph (i)(A)(iii)'' for ''paragraph (1)(A)(ii)'' and ''foreign base company shipping operations'' for ''less developed countries''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1112(a)(2) of Pub. L. 105–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to dispositions after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13231(e) of Pub. L. 103–66 provided that: ''The amendments made by this section [enacting section 956A of this title and amending this section and sections 959, 989, 1293, 1296, and 1297 of this title] shall apply to taxable years of foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.''

Section 13232(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 956 of this title] shall apply to taxable years of controlled foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1235(c) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99–514, set out as an Effective Date note under section 1291 of this title.

Amendment by section 1876(c)(2) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 132(d)(2)(A) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) of subsection (c) [amending this section] shall apply to taxable years of United States shareholders beginning after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 801(d)(4) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders (within the meaning of 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94–12, set out as an Effective Date note under section 955 of this title.

EFFECTIVE DATE

Section 12(c) of Pub. L. 87–834 provided that: ''The amendments made by this section [enacting this section and sections 952 to 964 and 970 to 972 of this title and amending sections 901, 904, and 1016 of this title] shall apply with respect to taxable years of foreign corporations beginning after December 31, 1962, and to taxable year of United States shareholders within which or with which such taxable years of such foreign corporations end.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 952. Subpart F income defined

(a) In general

For purposes of this subpart, the term ''subpart F income'' means, in the case of any controlled foreign corporation, the sum of—

(1) insurance income (as defined under section 953),

(2) the foreign base company income (as determined under section 954),

(3) an amount equal to the product of—

(A) the income of such corporation other than income which—

(i) is attributable to earnings and profits of the foreign corporation included in the gross income of a United States person under section 951 (other than by reason of this paragraph), or

(ii) is described in subsection (b),

multiplied by

(B) the international boycott factor (as determined under section 999),

(4) the sum of the amounts of any illegal bribes, kickbacks, or other payments (within the meaning of section 162(c)) paid by or on behalf of the corporation during the taxable year of the corporation directly or indirectly to an official, employee, or agent in fact of a government, and

(5) the income of such corporation derived from any foreign country during any period during which section 901(j) applies to such foreign country.

The payments referred to in paragraph (4) are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person. For purposes of paragraph (5), the income described therein shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income.

(b) Exclusion of United States income

In the case of a controlled foreign corporation, subpart F income does not include any item of income from sources within the United States which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States. For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account.

(c) Limitation

(1) In general

(A) Subpart F income limited to current earnings and profits

For purposes of subsection (a), the subpart F income of any controlled foreign corporation for any taxable year shall not exceed the earnings and profits of such corporation for such taxable year.

(B) Certain prior year deficits may be taken into account

(i) In general

The amount included in the gross income of any United States shareholder under section 951(a)(1)(A)(i) for any taxable year and attributable to a qualified activity shall be reduced by the amount of such shareholder's pro rata share of any qualified deficit.

(ii) Qualified deficit

The term ''qualified deficit'' means any deficit in earnings and profits of the controlled foreign corporation for any prior taxable year which began after December 31, 1986, and for which the controlled foreign corporation was a controlled foreign corporation; but only to the extent such deficit—

(I) is attributable to the same qualified activity as the activity giving rise to the income being offset, and

(II) has not previously been taken into account under this subparagraph.

In determining the deficit attributable to qualified activities described in subclause (II) or (III) of clause (iii), deficits in earnings and profits (to the extent not previously taken into account under this section) for taxable years beginning after 1962 and before 1987 also shall be taken into account. In the case of the qualified activity described in clause (iii)(I), the rule of the preceding sentence shall apply, except that ''1982'' shall be substituted for ''1962''.

(iii) Qualified activity

For purposes of this paragraph, the term ''qualified activity'' means any activity giving rise to—

(I) foreign base company oil related income,

(II) foreign base company sales income,

(III) foreign base company services income,

(IV) in the case of a qualified insurance company, insurance income or foreign personal holding company income, or

(V) in the case of a qualified financial institution, foreign personal holding company income.

(iv) Pro rata share

For purposes of this paragraph, the shareholder's pro rata share of any deficit for any prior taxable year shall be determined under rules similar to rules under section 951(a)(2) for whichever of the following yields the smaller share:

(I) the close of the taxable year, or

(II) the close of the taxable year in which the deficit arose.

(v) Qualified insurance company

For purposes of this subparagraph, the term ''qualified insurance company'' means any controlled foreign corporation predominantly engaged in the active conduct of an insurance business in the taxable year and in the prior taxable years in which the deficit arose.

(vi) Qualified financial institution

For purposes of this paragraph, the term ''qualified financial institution'' means any controlled foreign corporation predominantly engaged in the active conduct of a banking, financing, or similar business in the taxable year and in the prior taxable year in which the deficit arose.

(vii) Special rules for insurance income

(I) In general

An election may be made under this clause to have section 953(a) applied for purposes of this title without regard to the same country exception under paragraph (1)(A) thereof. Such election, once made, may be revoked only with the consent of the Secretary.

(II) Special rules for affiliated groups

In the case of an affiliated group of corporations (within the meaning of section 1504 but without regard to section 1504(b)(3) and by substituting ''more than 50 percent'' for ''at least 80 percent'' each place it appears), no election may be made under subclause (I) for any controlled foreign corporation unless such election is made for all other controlled foreign corporations who are members of such group and who were created or organized under the laws of the same country as such controlled foreign corporation. For purposes of clause (v), in determining whether any controlled corporation described in the preceding sentence is a qualified insurance company, all such corporations shall be treated as 1 corporation.

(C) Certain deficits of member of the same chain of corporations may be taken into account

(i) In general

A controlled foreign corporation may elect to reduce the amount of its subpart F income for any taxable year which is attributable to any qualified activity by the amount of any deficit in earnings and profits of a qualified chain member for a taxable year ending with (or within) the taxable year of such controlled foreign corporation to the extent such deficit is attributable to such activity. To the extent any deficit reduces subpart F income under the preceding sentence, such deficit shall not be taken into account under subparagraph (B).

(ii) Qualified chain member

For purposes of this subparagraph, the term ''qualified chain member'' means, with respect to any controlled foreign corporation, any other corporation which is created or organized under the laws of the same foreign country as the controlled foreign corporation but only if—

(I) all the stock of such other corporation (other than directors' qualifying shares) is owned at all times during the taxable year in which the deficit arose (directly or through 1 or more corporations other than the common parent) by such controlled foreign corporation, or

(II) all the stock of such controlled foreign corporation (other than directors' qualifying shares) is owned at all times during the taxable year in which the deficit arose (directly or through 1 or more corporations other than the common parent) by such other corporation.

(iii) Coordination

This subparagraph shall be applied after subparagraphs (A) and (B).

(2) Recharacterization in subsequent taxable years

If the subpart F income of any controlled foreign corporation for any taxable year was reduced by reason of paragraph (1)(A), any excess of the earnings and profits of such corporation for any subsequent taxable year over the subpart F income of such foreign corpora-

tion for such taxable year shall be recharacterized as subpart F income under rules similar to the rules applicable under section 904(f)(5).

(3) Special rule for determining earnings and profits

For purposes of this subsection, earnings and profits of any controlled foreign corporation shall be determined without regard to paragraphs (4), (5), and (6) of section 312(n). Under regulations, the preceding sentence shall not apply to the extent it would increase earnings and profits by an amount which was previously distributed by the controlled foreign corporation.

(d) Income derived from foreign country

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subsection (a)(5), including regulations which treat income paid through 1 or more entities as derived from a foreign country to which section 901(j) applies if such income was, without regard to such entities, derived from such country.

(Added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1008; amended Pub. L. 89–809, title I, § 104(j), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 94–455, title X, §§ 1062, 1065(a)(1), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1650, 1653, 1834; Pub. L. 97–248, title II, § 288(b)(1), Sept. 3, 1982, 96 Stat. 571; Pub. L. 99–509, title VIII, § 8041(b), Oct. 21, 1986, 100 Stat. 1963; Pub. L. 99–514, title XII, § 1221(b)(3)(A), (f), title XVIII, § 1876(c)(1), Oct. 22, 1986, 100 Stat. 2552, 2554, 2898; Pub. L. 100–647, title I, § 1012(i)(16), (22)–(25)(A), title VI, § 6131(a), Nov. 10, 1988, 102 Stat. 3510–3512, 3720; Pub. L. 105–34, title XI, § 1112(c)(1), Aug. 5, 1997, 111 Stat. 969; Pub. L. 108–357, title IV, § 415(c)(1), Oct. 22, 2004, 118 Stat. 1511; Pub. L. 109–135, title IV, § 412(kk), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 110–172, § 11(g)(14), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (a), is title I of Pub. L. 95–213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd–1 to 78dd–3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

AMENDMENTS

2007—Subsec. (b). Pub. L. 110–172 struck out second sentence which read as follows: ''For purposes of the preceding sentence, income described in paragraph (2) or (3) of section 921(d) shall be treated as derived from sources within the United States.''

2005—Subsec. (c)(1)(B)(ii). Pub. L. 109–135 substituted ''subclause (II) or (III) of clause (iii)'' for ''clause (iii)(III) or (IV)'' and ''clause (iii)(I)'' for ''clause (iii)(II)'' in concluding provisions.

2004—Subsec. (c)(1)(B)(iii). Pub. L. 108–357 redesignated subcls. (II) to (VI) as (I) to (V), respectively, and struck out former subcl. (I) which read as follows: ''foreign base company shipping income,''.

1997—Subsec. (b). Pub. L. 105–34 inserted at end ''For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account.''

1988—Subsec. (c)(1)(B)(ii). Pub. L. 100–647, § 1012(i)(24), inserted at end ''In determining the deficit attributable to qualified activities described in clause (iii)(III) or (IV), deficits in earnings and profits (to the extent not previously taken into account under this section) for taxable years beginning after 1962 and before 1987 also shall be taken into account. In the case of the qualified activity described in clause (iii)(II), the rule of the preceding sentence shall apply, except that '1982' shall be substituted for '1962'.''

Subsec. (c)(1)(B)(iii)(III) to (VI). Pub. L. 100–647, § 1012(i)(22), (23), added subcls. (III) and (IV), redesignated former subcl. (III) as (V) and substituted ''insurance income or foreign personal holding company income,'' for ''insurance income'', and redesignated former subcl. (IV) as (VI).

Subsec. (c)(1)(B)(vii). Pub. L. 100–647, § 6131(a), added cl. (vii).

Subsec. (c)(1)(C). Pub. L. 100–647, § 1012(i)(25)(A), added subpar. (C).

Subsec. (c)(3). Pub. L. 100–647, § 1012(i)(16), added par. (3).

1986—Subsec. (a). Pub. L. 99–509, § 8041(b)(1), added par. (5) and last sentence.

Subsec. (a)(1). Pub. L. 99–514, § 1221(b)(3)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the income derived from the insurance of United States risks (as determined under section 953), and''.

Subsec. (b). Pub. L. 99–514, § 1876(c)(1), inserted last sentence.

Subsec. (c). Pub. L. 99–514, § 1221(f), added subsec. (c) and struck out former subsec. (c) which read as follows: ''For purposes of subsection (a), the subpart F income of any controlled foreign corporation for any taxable year shall not exceed the earnings and profits of such corporation for such year reduced by the amount (if any) by which—

''(1) an amount equal to—

''(A) the sum of the deficits in earnings and profits for prior taxable years beginning after December 31, 1962, plus

''(B) the sum of the deficits in earnings and profits for taxable years beginning after December 31, 1959, and before January 1, 1963 (reduced by the sum of the earnings and profits for such taxable years); exceeds

''(2) an amount equal to the sum of the earnings and profits for prior taxable years beginning after December 31, 1962, allocated to other earnings and profits under section 959(c)(3).

For purposes of the preceding sentence, any deficit in earnings and profits for any prior taxable year shall be taken into account under paragraph (1) for any taxable year only to the extent it has not been taken into account under such paragraph for any preceding taxable year to reduce earnings and profits of such preceding year.''

Subsec. (d). Pub. L. 99–509, § 8041(b)(2), added subsec. (d).

Pub. L. 99–514, § 1221(f), struck out subsec. (d), special rule in case of indirect ownership, which read as follows: ''For purposes of subsection (c), if—

''(1) a United States shareholder owns (within the meaning of section 958(a)) stock of a foreign corporation, and by reason of such ownership owns (within the meaning of such section) stock of any other foreign corporation, and

''(2) any of such foreign corporations has a deficit in earnings and profits for the taxable year,

then the earnings and profits for the taxable year of each such foreign corporation which is a controlled foreign corporation shall, with respect to such United States shareholder, be properly reduced to take into account any deficit described in paragraph (2) in such manner as the Secretary shall prescribe by regulations.''

1982—Subsec. (a). Pub. L. 97–248 inserted provision that the payments referred to in par. (4) are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person.

1976—Subsec. (a)(3). Pub. L. 94–455, §1062(a), added par. (3).

Subsec. (a)(4). Pub. L. 94–455, §1065(a)(1), added par. (4).

Subsec. (d). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1966—Subsec. (b). Pub. L. 89–809 substituted ''In the case of a controlled foreign corporation, subpart F income does not include any item of income from sources within the United States which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States'' for ''Subpart F income does not include any item includible in gross income under this chapter (other than this subpart) as income derived from sources within the United States of a foreign corporation engaged in trade or business in the United States''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §415(d), Oct. 22, 2004, 118 Stat. 1511, provided that: ''The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1112(c)(2) of Pub. L. 105–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(i)(16), (22)–(25)(A) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6131(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 1221(f) of the Reform Act [Pub. L. 99–514].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1221(b)(3)(A), (f) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99–514, set out as a note under section 954 of this title.

Amendment by section 1876(c)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by Pub. L. 99–509 effective Jan. 1, 1987, see section 8041(c) of Pub. L. 99–509, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to payments made after Sept. 3, 1982, see section 288(c) of Pub. L. 97–248, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1062 of Pub. L. 94–455 applicable to participation in or cooperation with an international boycott more than 30 days after Oct. 4, 1976, see section 1066(a) of Pub. L. 94–455, set out as a note under section 908 of this title.

Section 1066(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by section 1065 [amending this section and sections 995 and 964 of this title] apply to payments described in section 162(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made more than 30 days after the date of enactment of this Act [Oct. 4, 1976].''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

DETERMINATION OF CORPORATE EARNINGS AND PROFITS FOR PURPOSES OF APPLYING SUBSECTION (c)(1)(A)

Section 1012(i)(6) of Pub. L. 100–647 provided that: ''For purposes of applying section 952(c)(1)(A) of the 1986 Code, the earnings and profits of any corporation shall be determined without regard to any increase in earnings and profits under section 1023(e)(3)(C) of the Reform Act [Pub. L. 99–514, set out as an Effective Date note under section 846 of this title].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§953. Insurance income

(a) Insurance income

(1) In general

For purposes of section 952(a)(1), the term ''insurance income'' means any income which—

(A) is attributable to the issuing (or reinsuring) of an insurance or annuity contract, and

(B) would (subject to the modifications provided by subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance company.

(2) Exception

Such term shall not include any exempt insurance income (as defined in subsection (e)).

(b) Special rules

For purposes of subsection (a)—

(1) The following provisions of subchapter L shall not apply:

(A) The small life insurance company deduction.

(B) Section 805(a)(5) (relating to operations loss deduction).

(C) Section 832(c)(5) (relating to certain capital losses).

(2) The items referred to in—

(A) section 803(a)(1) (relating to gross amount of premiums and other considerations),

(B) section 803(a)(2) (relating to net decrease in reserves),

(C) section 805(a)(2) (relating to net increase in reserves), and

(D) section 832(b)(4) (relating to premiums earned on insurance contracts),

shall be taken into account only to the extent they are in respect of any reinsurance or the

issuing of any insurance or annuity contract described in subsection (a)(1).

(3) Reserves for any insurance or annuity contract shall be determined in the same manner as under section 954(i).

(4) All items of income, expenses, losses, and deductions shall be properly allocated or apportioned under regulations prescribed by the Secretary.

(c) Special rule for certain captive insurance companies

(1) In general

For purposes only of taking into account related person insurance income—

(A) the term ''United States shareholder'' means, with respect to any foreign corporation, a United States person (as defined in section 957(c)) who owns (within the meaning of section 958(a)) any stock of the foreign corporation,

(B) the term ''controlled foreign corporation'' has the meaning given to such term by section 957(a) determined by substituting ''25 percent or more'' for ''more than 50 percent'', and

(C) the pro rata share referred to in section 951(a)(1)(A)(i) shall be determined under paragraph (5) of this subsection.

(2) Related person insurance income

For purposes of this subsection, the term ''related person insurance income'' means any insurance income (within the meaning of subsection (a)) attributable to a policy of insurance or reinsurance with respect to which the person (directly or indirectly) insured is a United States shareholder in the foreign corporation or a related person to such a shareholder.

(3) Exceptions

(A) Corporations not held by insureds

Paragraph (1) shall not apply to any foreign corporation if at all times during the taxable year of such foreign corporation—

(i) less than 20 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and

(ii) less than 20 percent of the total value of such corporation,

is owned (directly or indirectly under the principles of section 883(c)(4)) by persons who are (directly or indirectly) insured under any policy of insurance or reinsurance issued by such corporation or who are related persons to any such person.

(B) De minimis exception

Paragraph (1) shall not apply to any foreign corporation for a taxable year of such corporation if the related person insurance income (determined on a gross basis) of such corporation for such taxable year is less than 20 percent of its insurance income (as so determined) for such taxable year determined without regard to those provisions of subsection (a)(1) which limit insurance income to income from countries other than the country in which the corporation was created or organized.

(C) Election to treat income as effectively connected

Paragraph (1) shall not apply to any foreign corporation for any taxable year if—

(i) such corporation elects (at such time and in such manner as the Secretary may prescribe)—

(I) to treat its related person insurance income for such taxable year as income effectively connected with the conduct of a trade or business in the United States, and

(II) to waive all benefits (other than with respect to section 884) with respect to related person insurance income granted by the United States under any treaty between the United States and any foreign country, and

(ii) such corporation meets such requirements as the Secretary shall prescribe to ensure that the tax imposed by this chapter on such income is paid.

An election under this subparagraph made for any taxable year shall not be effective if the corporation (or any predecessor thereof) was a disqualified corporation for the taxable year for which the election was made or for any prior taxable year beginning after 1986.

(D) Special rules for subparagraph (C)

(i) Period during which election in effect

(I) In general

Except as provided in subclause (II), any election under subparagraph (C) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(II) Termination

If a foreign corporation which made an election under subparagraph (C) for any taxable year is a disqualified corporation for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

(ii) Exemption from tax imposed by section 4371

The tax imposed by section 4371 shall not apply with respect to any related person insurance income treated as effectively connected with the conduct of a trade or business within the United States under subparagraph (C).

(E) Disqualified corporation

For purposes of this paragraph the term ''disqualified corporation'' means, with respect to any taxable year, any foreign corporation which is a controlled foreign corporation for an uninterrupted period of 30 days or more during such taxable year (determined without regard to this subsection) but only if a United States shareholder (determined without regard to this subsection) owns (within the meaning of section 958(a)) stock in such corporation at some time during such taxable year.

(4) Treatment of mutual insurance companies

In the case of a mutual insurance company—

(A) this subsection shall apply,

(B) policyholders of such company shall be treated as shareholders, and

(C) appropriate adjustments in the application of this subpart shall be made under regulations prescribed by the Secretary.

(5) Determination of pro rata share

(A) In general

The pro rata share determined under this paragraph for any United States shareholder is the lesser of—

(i) the amount which would be determined under paragraph (2) of section 951(a) if—

(I) only related person insurance income were taken into account,

(II) stock owned (within the meaning of section 958(a)) by United States shareholders on the last day of the taxable year were the only stock in the foreign corporation, and

(III) only distributions received by United States shareholders were taken into account under subparagraph (B) of such paragraph (2), or

(ii) the amount which would be determined under paragraph (2) of section 951(a) if the entire earnings and profits of the foreign corporation for the taxable year were subpart F income.

(B) Coordination with other provisions

The Secretary shall prescribe regulations providing for such modifications to the provisions of this subpart as may be necessary or appropriate by reason of subparagraph (A).

(6) Related person

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), the term ''related person'' has the meaning given such term by section 954(d)(3).

(B) Treatment of certain liability insurance policies

In the case of any policy of insurance covering liability arising from services performed as a director, officer, or employee of a corporation or as a partner or employee of a partnership, the person performing such services and the entity for which such services are performed shall be treated as related persons.

(7) Coordination with section 1248

For purposes of section 1248, if any person is (or would be but for paragraph (3)) treated under paragraph (1) as a United States shareholder with respect to any foreign corporation which would be taxed under subchapter L if it were a domestic corporation and which is (or would be but for paragraph (3)) treated under paragraph (1) as a controlled foreign corporation—

(A) such person shall be treated as meeting the stock ownership requirements of section 1248(a)(2) with respect to such foreign corporation, and

(B) such foreign corporation shall be treated as a controlled foreign corporation.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

(A) regulations preventing the avoidance of this subsection through cross insurance arrangements or otherwise, and

(B) regulations which may provide that a person will not be treated as a United States shareholder under paragraph (1) with respect to any foreign corporation if neither such person (nor any related person to such person) is (directly or indirectly) insured under any policy of insurance or reinsurance issued by such foreign corporation.

(d) Election by foreign insurance company to be treated as domestic corporation

(1) In general

If—

(A) a foreign corporation is a controlled foreign corporation (as defined in section 957(a) by substituting ''25 percent or more'' for ''more than 50 percent'' and by using the definition of United States shareholder under 953(c)(1)(A)),

(B) such foreign corporation would qualify under part I or II of subchapter L for the taxable year if it were a domestic corporation,

(C) such foreign corporation meets such requirements as the Secretary shall prescribe to ensure that the taxes imposed by this chapter on such foreign corporation are paid, and

(D) such foreign corporation makes an election to have this paragraph apply and waives all benefits to such corporation granted by the United States under any treaty,

for purposes of this title, such corporation shall be treated as a domestic corporation.

(2) Period during which election is in effect

(A) In general

Except as provided in subparagraph (B), an election under paragraph (1) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(B) Termination

If a corporation which made an election under paragraph (1) for any taxable year fails to meet the requirements of subparagraphs (A), (B), and (C), of paragraph (1) for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

(3) Treatment of losses

If any corporation treated as a domestic corporation under this subsection is treated as a member of an affiliated group for purposes of chapter 6 (relating to consolidated returns), any loss of such corporation shall be treated as a dual consolidated loss for purposes of sec-

tion 1503(d) without regard to paragraph (2)(B) thereof.

(4) Effect of election

(A) In general

For purposes of section 367, any foreign corporation making an election under paragraph (1) shall be treated as transferring (as of the 1st day of the 1st taxable year to which such election applies) all of its assets to a domestic corporation in connection with an exchange to which section 354 applies.

(B) Exception for pre-1988 earnings and profit

(i) In general

Earnings and profits of the foreign corporation accumulated in taxable years beginning before January 1, 1988, shall not be included in the gross income of the persons holding stock in such corporation by reason of subparagraph (A).

(ii) Treatment of distributions

For purposes of this title, any distribution made by a corporation to which an election under paragraph (1) applies out of earnings and profits accumulated in taxable years beginning before January 1, 1988, shall be treated as a distribution made by a foreign corporation.

(iii) Certain rules to continue to apply to pre-1988 earnings

The provisions specified in clause (iv) shall be applied without regard to paragraph (1), except that, in the case of a corporation to which an election under paragraph (1) applies, only earnings and profits accumulated in taxable years beginning before January 1, 1988, shall be taken into account.

(iv) Specified provisions

The provisions specified in this clause are:

(I) Section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporations).

(II) Subpart F of part III of subchapter N to the extent such subpart relates to earnings invested in United States property or amounts referred to in clause (ii) or (iii) of section 951(a)(1)(A).

(III) Section 884 to the extent the foreign corporation reinvested 1987 earnings and profits in United States assets.

(5) Effect of termination

For purposes of section 367, if—

(A) an election is made by a corporation under paragraph (1) for any taxable year, and

(B) such election ceases to apply for any subsequent taxable year,

such corporation shall be treated as a domestic corporation transferring (as of the 1st day of such subsequent taxable year) all of its property to a foreign corporation in connection with an exchange to which section 354 applies.

(6) Additional tax on corporation making election

(A) In general

If a corporation makes an election under paragraph (1), the amount of tax imposed by this chapter for the 1st taxable year to which such election applies shall be increased by the amount determined under subparagraph (B).

(B) Amount of tax

The amount of tax determined under this paragraph shall be equal to the lesser of—

(i) ¾ of 1 percent of the aggregate amount of capital and accumulated surplus of the corporation as of December 31, 1987, or

(ii) $1,500,000.

(e) Exempt insurance income

For purposes of this section—

(1) Exempt insurance income defined

(A) In general

The term ''exempt insurance income'' means income derived by a qualifying insurance company which—

(i) is attributable to the issuing (or reinsuring) of an exempt contract by such company or a qualifying insurance company branch of such company, and

(ii) is treated as earned by such company or branch in its home country for purposes of such country's tax laws.

(B) Exception for certain arrangements

Such term shall not include income attributable to the issuing (or reinsuring) of an exempt contract as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect of issuing (or reinsuring) a contract which is not an exempt contract.

(C) Determinations made separately

For purposes of this subsection and section 954(i), the exempt insurance income and exempt contracts of a qualifying insurance company or any qualifying insurance company branch of such company shall be determined separately for such company and each such branch by taking into account—

(i) in the case of the qualifying insurance company, only items of income, deduction, gain, or loss, and activities of such company not properly allocable or attributable to any qualifying insurance company branch of such company, and

(ii) in the case of a qualifying insurance company branch, only items of income, deduction, gain, or loss and activities properly allocable or attributable to such branch.

(2) Exempt contract

(A) In general

The term ''exempt contract'' means an insurance or annuity contract issued or reinsured by a qualifying insurance company or qualifying insurance company branch in connection with property in, liability aris-

ing out of activity in, or the lives or health of residents of, a country other than the United States.

(B) Minimum home country income required

(i) In general

No contract of a qualifying insurance company or of a qualifying insurance company branch shall be treated as an exempt contract unless such company or branch derives more than 30 percent of its net written premiums from exempt contracts (determined without regard to this subparagraph)—

(I) which cover applicable home country risks, and

(II) with respect to which no policyholder, insured, annuitant, or beneficiary is a related person (as defined in section 954(d)(3)).

(ii) Applicable home country risks

The term ''applicable home country risks'' means risks in connection with property in, liability arising out of activity in, or the lives or health of residents of, the home country of the qualifying insurance company or qualifying insurance company branch, as the case may be, issuing or reinsuring the contract covering the risks.

(C) Substantial activity requirements for cross border risks

A contract issued by a qualifying insurance company or qualifying insurance company branch which covers risks other than applicable home country risks (as defined in subparagraph (B)(ii)) shall not be treated as an exempt contract unless such company or branch, as the case may be—

(i) conducts substantial activity with respect to an insurance business in its home country, and

(ii) performs in its home country substantially all of the activities necessary to give rise to the income generated by such contract.

(3) Qualifying insurance company

The term ''qualifying insurance company'' means any controlled foreign corporation which—

(A) is subject to regulation as an insurance (or reinsurance) company by its home country, and is licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3)) in such home country,

(B) derives more than 50 percent of its aggregate net written premiums from the issuance or reinsurance by such controlled foreign corporation and each of its qualifying insurance company branches of contracts—

(i) covering applicable home country risks (as defined in paragraph (2)) of such corporation or branch, as the case may be, and

(ii) with respect to which no policyholder, insured, annuitant, or beneficiary is a related person (as defined in section 954(d)(3)),

except that in the case of a branch, such premiums shall only be taken into account to the extent such premiums are treated as earned by such branch in its home country for purposes of such country's tax laws, and

(C) is engaged in the insurance business and would be subject to tax under subchapter L if it were a domestic corporation.

(4) Qualifying insurance company branch

The term ''qualifying insurance company branch'' means a qualified business unit (within the meaning of section 989(a)) of a controlled foreign corporation if—

(A) such unit is licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3)) in such home country, and

(B) such controlled foreign corporation is a qualifying insurance company, determined under paragraph (3) as if such unit were a qualifying insurance company branch.

(5) Life insurance or annuity contract

For purposes of this section and section 954, the determination of whether a contract issued by a controlled foreign corporation or a qualified business unit (within the meaning of section 989(a)) is a life insurance contract or an annuity contract shall be made without regard to sections 72(s), 101(f), 817(h), and 7702 if—

(A) such contract is regulated as a life insurance or annuity contract by the corporation's or unit's home country, and

(B) no policyholder, insured, annuitant, or beneficiary with respect to the contract is a United States person.

(6) Home country

For purposes of this subsection, except as provided in regulations—

(A) Controlled foreign corporation

The term ''home country'' means, with respect to a controlled foreign corporation, the country in which such corporation is created or organized.

(B) Qualified business unit

The term ''home country'' means, with respect to a qualified business unit (as defined in section 989(a)), the country in which the principal office of such unit is located and in which such unit is licensed, authorized, or regulated by the applicable insurance regulatory body to sell insurance, reinsurance, or annuity contracts to persons other than related persons (as defined in section 954(d)(3)) in such country.

(7) Anti-abuse rules

For purposes of applying this subsection and section 954(i)—

(A) the rules of section 954(h)(7) (other than subparagraph (B) thereof) shall apply,

(B) there shall be disregarded any item of income, gain, loss, or deduction of, or de-

rived from, an entity which is not engaged in regular and continuous transactions with persons which are not related persons,

(C) there shall be disregarded any change in the method of computing reserves a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of this subsection or section 954(i),

(D) a contract of insurance or reinsurance shall not be treated as an exempt contract (and premiums from such contract shall not be taken into account for purposes of paragraph (2)(B) or (3)) if—

(i) any policyholder, insured, annuitant, or beneficiary is a resident of the United States and such contract was marketed to such resident and was written to cover a risk outside the United States, or

(ii) the contract covers risks located within and without the United States and the qualifying insurance company or qualifying insurance company branch does not maintain such contemporaneous records, and file such reports, with respect to such contract as the Secretary may require,

(E) the Secretary may prescribe rules for the allocation of contracts (and income from contracts) among 2 or more qualifying insurance company branches of a qualifying insurance company in order to clearly reflect the income of such branches, and

(F) premiums from a contract shall not be taken into account for purposes of paragraph (2)(B) or (3) if such contract reinsures a contract issued or reinsured by a related person (as defined in section 954(d)(3)).

For purposes of subparagraph (D), the determination of where risks are located shall be made under the principles of section 953.

(8) Coordination with subsection (c)

In determining insurance income for purposes of subsection (c), exempt insurance income shall not include income derived from exempt contracts which cover risks other than applicable home country risks.

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection and section 954(i).

(10) Application

This subsection and section 954(i) shall apply only to taxable years of a foreign corporation beginning after December 31, 1998, and before January 1, 2012, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends. If this subsection does not apply to a taxable year of a foreign corporation beginning after December 31, 2011 (and taxable years of United States shareholders ending with or within such taxable year), then, notwithstanding the preceding sentence, subsection (a) shall be applied to such taxable years in the same manner as it would if the taxable year of the foreign corporation began in 1998.

(11) Cross reference

For income exempt from foreign personal holding company income, see section 954(i).

(Added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1008; amended Pub. L. 89–809, title I, § 104(m)(2), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title II, § 211(b)(13), July 18, 1984, 98 Stat. 755; Pub. L. 99–514, title XII, § 1221(b)(1), (2), (3)(D), Oct. 22, 1986, 100 Stat. 2551, 2553; Pub. L. 100–647, title I, § 1012(i)(1)–(3)(B), (4), (5), (7)–(9), (21), title VI, § 6135(a), Nov. 10, 1988, 102 Stat. 3507–3509, 3511, 3721; Pub. L. 101–239, title VII, § 7816(p), Dec. 19, 1989, 103 Stat. 2423; Pub. L. 105–277, div. J, title I, § 1005(b)(1), (3), Oct. 21, 1998, 112 Stat. 2681–893, 2681–899; Pub. L. 106–170, title V, § 503(a), (b), Dec. 17, 1999, 113 Stat. 1921; Pub. L. 107–147, title VI, § 614(a)(1), Mar. 9, 2002, 116 Stat. 61; Pub. L. 109–222, title I, § 103(a)(1), May 17, 2006, 120 Stat. 346; Pub. L. 110–343, div. C, title III, § 303(a), Oct. 3, 2008, 122 Stat. 3866; Pub. L. 111–312, title VII, § 750(a), (b), Dec. 17, 2010, 124 Stat. 3320.)

AMENDMENTS

2010—Subsec. (e)(10). Pub. L. 111–312 substituted ''January 1, 2012'' for ''January 1, 2010'' and ''December 31, 2011'' for ''December 31, 2009''.

2008—Subsec. (e)(10). Pub. L. 110–343 substituted ''January 1, 2010'' for ''January 1, 2009'' and ''December 31, 2009'' for ''December 31, 2008''.

2006—Subsec. (e)(10). Pub. L. 109–222 substituted ''January 1, 2009'' for ''January 1, 2007'' and ''December 31, 2008'' for ''December 31, 2006''.

2002—Subsec. (e)(10). Pub. L. 107–147 substituted ''January 1, 2007'' for ''January 1, 2002'' and ''December 31, 2006'' for ''December 31, 2001''.

1999—Subsec. (e)(10). Pub. L. 106–170 substituted ''taxable years'' for ''the first taxable year'', ''January 1, 2002'' for ''January 1, 2000'', and ''within which any such'' for ''within which such'', and inserted at end ''If this subsection does not apply to a taxable year of a foreign corporation beginning after December 31, 2001 (and taxable years of United States shareholders ending with or within such taxable year), then, notwithstanding the preceding sentence, subsection (a) shall be applied to such taxable years in the same manner as it would if the taxable year of the foreign corporation began in 1998.''

1998—Subsec. (a). Pub. L. 105–277, § 1005(b)(1)(A), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''For purposes of section 952(a)(1), the term 'insurance income' means any income which—

''(1) is attributable to the issuing (or reinsuring) of any insurance or annuity contract—

''(A) in connection with property in, liability arising out of activity in, or in connection with the lives or health of residents of, a country other than the country under the laws of which the controlled foreign corporation is created or organized, or

''(B) in connection with risks not described in subparagraph (A) as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect of issuing (or reinsuring) a contract described in subparagraph (A), and

''(2) would (subject to the modifications provided by paragraphs (1) and (2) of subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance company.''

Subsec. (b)(3), (4). Pub. L. 105–277, § 1005(b)(3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (e). Pub. L. 105–277, § 1005(b)(1)(B), added subsec. (e).

1989—Subsec. (d)(3). Pub. L. 101–239 substituted ''for purposes of section 1503(d) without regard to paragraph (2)(B) thereof'' for ''(as defined in section 1503(d))''.

1988—Subsec. (b)(1). Pub. L. 100–647, § 1012(i)(7)(A), redesignated par. (2) as (1) and struck out former par. (1)

which read as follows: ''A corporation which would, if it were a domestic insurance corporation, be taxable under part II of subchapter L shall apply subsection (a) as if it were taxable under part III of subchapter L.''

Subsec. (b)(1)(A). Pub. L. 100–647, §1012(i)(7)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: ''The special life insurance company deduction and the small life insurance company deduction.''

Subsec. (b)(2) to (4). Pub. L. 100–647, §1012(i)(7)(A), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out ''(other than those taken into account under paragraph (3))'' after ''and deductions'' in par. (3). Former par. (2) redesignated (1).

Subsec. (c)(1)(C). Pub. L. 100–647, §1012(i)(2)(A), added subpar. (C).

Subsec. (c)(2). Pub. L. 100–647, §1012(i)(3)(A), (4)(B), (5), substituted ''insurance income (within the meaning of subsection (a)) attributable'' for ''insurance income attributable'', ''with respect to which the person (directly or indirectly) insured is'' for ''with respect to which the primary insured is'', and ''related person'' for ''related person (within the meaning of section 954(d)(3))''.

Subsec. (c)(3)(A). Pub. L. 100–647, §1012(i)(3)(B), (4)(B), substituted ''persons who are (directly or indirectly) insured'' for ''persons who are the primary insured'' and ''to any such person'' for ''(within the meaning of section 954(d)(3)) to any such primary insured''.

Subsec. (c)(3)(B). Pub. L. 100–647, §1012(i)(8), substituted ''related person insurance income (determined on a gross basis)'' for ''related person insurance income'' and ''its insurance income (as so determined)'' for ''its insurance income''.

Subsec. (c)(3)(C). Pub. L. 100–647, §1012(i)(1)(A), (9), substituted ''all benefits (other than with respect to section 884)'' for ''all benefits'' and ''granted by the United States under any treaty'' for ''under any income tax treaty'' in cl. (i)(II) and inserted at end ''An election under this subparagraph made for any taxable year shall not be effective if the corporation (or any predecessor thereof) was a disqualified corporation for the taxable year for which the election was made or for any prior taxable year beginning after 1986.''

Subsec. (c)(3)(D)(i). Pub. L. 100–647, §1012(i)(1)(B), substituted ''Period during which election in effect'' for ''Election irrevocable'' in heading and amended text generally. Prior to amendment, text read as follows: ''Any election under subparagraph (C) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.''

Subsec. (c)(3)(E). Pub. L. 100–647, §1012(i)(1)(C), added subpar. (E).

Subsec. (c)(5). Pub. L. 100–647, §1012(i)(2)(B), added par. (5) and redesignated former par. (5) as (6).

Subsec. (c)(6). Pub. L. 100–647, §1012(i)(4)(A), added par. (6) and redesignated former par. (6) as (7).

Pub. L. 100–647, §1012(i)(2)(B), redesignated former par. (5) as (6).

Subsec. (c)(7). Pub. L. 100–647, §1012(i)(21), added par. (7) and struck out former par. (7) ''Regulations'', which read as follows: ''The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations preventing the avoidance of this subsection through cross insurance arrangements or otherwise.''

Pub. L. 100–647, §1012(i)(4)(A), redesignated former par. (6) as (7).

Subsec. (c)(8). Pub. L. 100–647, §1012(i)(21), added par. (8).

Subsec. (d). Pub. L. 100–647, §6135(a), added subsec. (d).

1986—Pub. L. 99–514, §1221(b)(3)(D), substituted ''Insurance income'' for ''Income from insurance of United States risks'' in section catchline.

Subsec. (a). Pub. L. 99–514, §1221(b)(1), amended subsec. (a) generally, substituting provisions defining ''insurance income'' for former provisions defining ''income derived from the insurance of United States risks''.

Subsec. (c). Pub. L. 99–514, §1221(b)(2), added subsec. (c).

1984—Subsec. (a)(2). Pub. L. 98–369, §211(b)(13)(D), substituted ''and (2)'' for '', (2), and (3)''.

Subsec. (b)(1). Pub. L. 98–369, §211(b)(13)(A), redesignated par. (2) as (1). Former par. (1), which provided that the application of part I of subchapter L of this chapter, life insurance company taxable income was the gain from operations as defined in section 809(b), was struck out.

Subsec. (b)(2). Pub. L. 98–369, §211(b)(13)(B), in amending par. (2) generally, substituted

''(A) The special life insurance company deduction and the small life insurance company deduction.

''(B) Section 805(a)(5) (relating to operations loss deduction).

''(C) Section 832(c)(5) (relating to certain capital losses).''

for

''(A) Section 809(d)(4) (operations loss deduction).

''(B) Section 809(d)(5) (certain nonparticipating contracts).

''(C) Section 809(d)(6) (group life, accident, and health insurance).''

and struck out

''(D) Section 809(d)(10) (small business deduction).

''(E) Section 817(b) (gain on property held on December 31, 1958, and certain substituted property acquired after 1958).

''(F) Section 832(c)(5) (certain capital losses).''

Pub. L. 98–369, §211(b)(13)(A), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (b)(3). Pub. L. 98–369, §211(b)(13)(A), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (b)(3)(A). Pub. L. 98–369, §211(b)(13)(C)(i), substituted ''section 803(a)(1)'' for ''section 809(c)(1)''.

Subsec. (b)(3)(B). Pub. L. 98–369, §211(b)(13)(C)(ii), substituted ''section 803(a)(2)'' for ''section 809(c)(2)''.

Subsec. (b)(3)(C). Pub. L. 98–369, §211(b)(13)(C)(iii), substituted ''section 805(a)(2)'' for ''section 809(d)(2)''.

Subsec. (b)(4), (5). Pub. L. 98–369, §211(b)(13)(A), (E), redesignated par. (5) as (4) and substituted ''paragraph (3)'' for ''paragraph (4)''. Former par. (4) redesignated (3).

1976—Subsec. (b)(5). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1966—Subsec. (b)(3)(F). Pub. L. 89–809 substituted ''832(c)(5)'' for ''832(b)(5)''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–312, title VII, §750(c), Dec. 17, 2010, 124 Stat. 3320, provided that: ''The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.''

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107–147, title VI, §614(c), Mar. 9, 2002, 116 Stat. 62, provided that: ''The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, §503(c), Dec. 17, 1999, 113 Stat. 1921, provided that: ''The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years beginning after December 31, 1999.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(i)(3)(C) of Pub. L. 100–647 provided that: ''The amendments made by this paragraph [amending

this section] to the extent such amendments add the phrase '(directly or indirectly)' shall apply only to taxable years beginning after December 31, 1987.''

Amendment by section 1012(i)(1), (2), (4), (5), (7)–(9), (21) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6135(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99–514, set out as a note under section 954 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89–809, set out as a note under section 11 of this title.

§ 954. Foreign base company income

(a) Foreign base company income

For purposes of section 952(a)(2), the term ''foreign base company income'' means for any taxable year the sum of—

(1) the foreign personal holding company income for the taxable year (determined under subsection (c) and reduced as provided in subsection (b)(5)),

(2) the foreign base company sales income for the taxable year (determined under subsection (d) and reduced as provided in subsection (b)(5)),

(3) the foreign base company services income for the taxable year (determined under subsection (e) and reduced as provided in subsection (b)(5)),

[(4) Repealed. Pub. L. 108–357, title IV, § 415(a)(1), Oct. 22, 2004, 118 Stat. 1511]

(5) the foreign base company oil related income for the taxable year (determined under subsection (g) and reduced as provided in subsection (b)(5)).

(b) Exclusion and special rules

[(1) Repealed. Pub. L. 94–12, title VI, § 602(c)(1), Mar. 29, 1975, 89 Stat. 58]

[(2) Repealed. Pub. L. 99–514, title XII, § 1221(c)(1), Oct. 22, 1986, 100 Stat. 2553]

(3) De minimis, etc., rules

For purposes of subsection (a) and section 953—

(A) De minimis rule

If the sum of foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year is less than the lesser of—

(i) 5 percent of gross income, or

(ii) $1,000,000,

no part of the gross income for the taxable year shall be treated as foreign base company income or insurance income.

(B) Foreign base company income and insurance income in excess of 70 percent of gross income

If the sum of the foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year exceeds 70 percent of gross income, the entire gross income for the taxable year shall, subject to the provisions of paragraphs (4) and (5), be treated as foreign base company income or insurance income (whichever is appropriate).

(C) Gross insurance income

For purposes of subparagraphs (A) and (B), the term ''gross insurance income'' means any item of gross income taken into account in determining insurance income under section 953.

(4) Exception for certain income subject to high foreign taxes

For purposes of subsection (a) and section 953, foreign base company income and insurance income shall not include any item of income received by a controlled foreign corporation if the taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11. The preceding sentence shall not apply to foreign base company oil-related income described in subsection (a)(5).

(5) Deductions to be taken into account

For purposes of subsection (a), the foreign personal holding company income, the foreign base company sales income, the foreign base company services income,,[1] and the foreign base company oil related income shall be reduced, under regulations prescribed by the Secretary so as to take into account deductions (including taxes) properly allocable to such income. Except to the extent provided in regulations prescribed by the Secretary, any interest which is paid or accrued by the controlled foreign corporation to any United States shareholder in such corporation (or any controlled foreign corporation related to such a shareholder) shall be allocated first to foreign personal holding company income which is passive income (within the meaning of section 904(d)(2)) of such corporation to the extent thereof. The Secretary may, by regulations, provide that the preceding sentence shall apply also to interest paid or accrued to other persons.

(6) Foreign base company oil related income not treated as another kind of base company income

Income of a corporation which is foreign base company oil related income shall not be considered foreign base company income of

[1] So in original.

such corporation under paragraph (2),[2] or (3) of subsection (a).

(c) Foreign personal holding company income

(1) In general

For purposes of subsection (a)(1), the term ''foreign personal holding company income'' means the portion of the gross income which consists of:

(A) Dividends, etc.

Dividends, interest, royalties, rents, and annuities.

(B) Certain property transactions

The excess of gains over losses from the sale or exchange of property—

(i) which gives rise to income described in subparagraph (A) (after application of paragraph (2)(A)) other than property which gives rise to income not treated as foreign personal holding company income by reason of subsection (h) or (i) for the taxable year,

(ii) which is an interest in a trust, partnership, or REMIC, or

(iii) which does not give rise to any income.

Gains and losses from the sale or exchange of any property which, in the hands of the controlled foreign corporation, is property described in section 1221(a)(1) shall not be taken into account under this subparagraph.

(C) Commodities transactions

The excess of gains over losses from transactions (including futures, forward, and similar transactions) in any commodities. This subparagraph shall not apply to gains or losses which—

(i) arise out of commodity hedging transactions (as defined in paragraph (5)(A)),

(ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation's commodities are property described in paragraph (1), (2), or (8) of section 1221(a), or

(iii) are foreign currency gains or losses (as defined in section 988(b)) attributable to any section 988 transactions.

(D) Foreign currency gains

The excess of foreign currency gains over foreign currency losses (as defined in section 988(b)) attributable to any section 988 transactions. This subparagraph shall not apply in the case of any transaction directly related to the business needs of the controlled foreign corporation.

(E) Income equivalent to interest

Any income equivalent to interest, including income from commitment fees (or similar amounts) for loans actually made.

(F) Income from notional principal contracts

(i) In general

Net income from notional principal contracts.

(ii) Coordination with other categories of foreign personal holding company income

Any item of income, gain, deduction, or loss from a notional principal contract entered into for purposes of hedging any item described in any preceding subparagraph shall not be taken into account for purposes of this subparagraph but shall be taken into account under such other subparagraph.

(G) Payments in lieu of dividends

Payments in lieu of dividends which are made pursuant to an agreement to which section 1058 applies.

(H) Personal service contracts

(i) Amounts received under a contract under which the corporation is to furnish personal services if—

(I) some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or

(II) the individual who is to perform the services is designated (by name or by description) in the contract, and

(ii) amounts received from the sale or other disposition of such a contract.

This subparagraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(2) Exception for certain amounts

(A) Rents and royalties derived in active business

Foreign personal holding company income shall not include rents and royalties which are derived in the active conduct of a trade or business and which are received from a person other than a related person (within the meaning of subsection (d)(3)). For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.

(B) Certain export financing

Foreign personal holding company income shall not include any interest which is derived in the conduct of a banking business and which is export financing interest (as defined in section 904(d)(2)(G)).

(C) Exception for dealers

Except as provided by regulations, in the case of a regular dealer in property which is property described in paragraph (1)(B), forward contracts, option contracts, or similar

[2] So in original. The comma probably should not appear.

financial instruments (including notional principal contracts and all instruments referenced to commodities), there shall not be taken into account in computing foreign personal holding company income—

(i) any item of income, gain, deduction, or loss (other than any item described in subparagraph (A), (E), or (G) of paragraph (1)) from any transaction (including hedging transactions and transactions involving physical settlement) entered into in the ordinary course of such dealer's trade or business as such a dealer, and

(ii) if such dealer is a dealer in securities (within the meaning of section 475), any interest or dividend or equivalent amount described in subparagraph (E) or (G) of paragraph (1) from any transaction (including any hedging transaction or transaction described in section 956(c)(2)(I)) entered into in the ordinary course of such dealer's trade or business as such a dealer in securities, but only if the income from the transaction is attributable to activities of the dealer in the country under the laws of which the dealer is created or organized (or in the case of a qualified business unit described in section 989(a), is attributable to activities of the unit in the country in which the unit both maintains its principal office and conducts substantial business activity).

(3) Certain income received from related persons

(A) In general

Except as provided in subparagraph (B), the term ''foreign personal holding company income'' does not include—

(i) dividends and interest received from a related person which (I) is a corporation created or organized under the laws of the same foreign country under the laws of which the controlled foreign corporation is created or organized, and (II) has a substantial part of its assets used in its trade or business located in such same foreign country, and

(ii) rents and royalties received from a corporation which is a related person for the use of, or the privilege of using, property within the country under the laws of which the controlled foreign corporation is created or organized.

To the extent provided in regulations, payments made by a partnership with 1 or more corporate partners shall be treated as made by such corporate partners in proportion to their respective interests in the partnership.

(B) Exception not to apply to items which reduce subpart F income

Subparagraph (A) shall not apply in the case of any interest, rent, or royalty to the extent such interest, rent, or royalty reduces the payor's subpart F income or creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation.

(C) Exception for certain dividends

Subparagraph (A)(i) shall not apply to any dividend with respect to any stock which is attributable to earnings and profits of the distributing corporation accumulated during any period during which the person receiving such dividend did not hold such stock either directly, or indirectly through a chain of one or more subsidiaries each of which meets the requirements of subparagraph (A)(i).

(4) Look-thru rule for certain partnership sales

(A) In general

In the case of any sale by a controlled foreign corporation of an interest in a partnership with respect to which such corporation is a 25-percent owner, such corporation shall be treated for purposes of this subsection as selling the proportionate share of the assets of the partnership attributable to such interest. The Secretary shall prescribe such regulations as may be appropriate to prevent abuse of the purposes of this paragraph, including regulations providing for coordination of this paragraph with the provisions of subchapter K.

(B) 25-percent owner

For purposes of this paragraph, the term ''25-percent owner'' means a controlled foreign corporation which owns directly 25 percent or more of the capital or profits interest in a partnership. For purposes of the preceding sentence, if a controlled foreign corporation is a shareholder or partner of a corporation or partnership, the controlled foreign corporation shall be treated as owning directly its proportionate share of any such capital or profits interest held directly or indirectly by such corporation or partnership. If a controlled foreign corporation is treated as owning a capital or profits interest in a partnership under constructive ownership rules similar to the rules of section 958(b), the controlled foreign corporation shall be treated as owning such interest directly for purposes of this subparagraph.

(5) Definition and special rules relating to commodity transactions

(A) Commodity hedging transactions

For purposes of paragraph (1)(C)(i), the term ''commodity hedging transaction'' means any transaction with respect to a commodity if such transaction—

(i) is a hedging transaction as defined in section 1221(b)(2), determined—

(I) without regard to subparagraph (A)(ii) thereof,

(II) by applying subparagraph (A)(i) thereof by substituting ''ordinary property or property described in section 1231(b)'' for ''ordinary property'', and

(III) by substituting ''controlled foreign corporation'' for ''taxpayer'' each place it appears, and

(ii) is clearly identified as such in accordance with section 1221(a)(7).

(B) Treatment of dealer activities under paragraph (1)(C)

Commodities with respect to which gains and losses are not taken into account under paragraph (2)(C) in computing a controlled foreign corporation's foreign personal holding company income shall not be taken into account in applying the substantially all test under paragraph (1)(C)(ii) to such corporation.

(C) Regulations

The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of paragraph (1)(C) in the case of transactions involving related parties.

(6) Look-thru rule for related controlled foreign corporations

(A) In general

For purposes of this subsection, dividends, interest, rents, and royalties received or accrued from a controlled foreign corporation which is a related person shall not be treated as foreign personal holding company income to the extent attributable or properly allocable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which is neither subpart F income nor income treated as effectively connected with the conduct of a trade or business in the United States. For purposes of this subparagraph, interest shall include factoring income which is treated as income equivalent to interest for purposes of paragraph (1)(E). The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including such regulations as may be necessary or appropriate to prevent the abuse of the purposes of this paragraph.

(B) Exception

Subparagraph (A) shall not apply in the case of any interest, rent, or royalty to the extent such interest, rent, or royalty creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation.

(C) Application

Subparagraph (A) shall apply to taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2012, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

(d) Foreign base company sales income

(1) In general

For purposes of subsection (a)(2), the term ''foreign base company sales income'' means income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with the purchase of personal property from a related person and its sale to any person, the sale of personal property to any person on behalf of a related person, the purchase of personal property from any person and its sale to a related person, or the purchase of personal property from any person on behalf of a related person where—

(A) the property which is purchased (or in the case of property sold on behalf of a related person, the property which is sold) is manufactured, produced, grown, or extracted outside the country under the laws of which the controlled foreign corporation is created or organized, and

(B) the property is sold for use, consumption, or disposition outside such foreign country, or, in the case of property purchased on behalf of a related person, is purchased for use, consumption, or disposition outside such foreign country.

For purposes of this subsection, personal property does not include agricultural commodities which are not grown in the United States in commercially marketable quantities.

(2) Certain branch income

For purposes of determining foreign base company sales income in situations in which the carrying on of activities by a controlled foreign corporation through a branch or similar establishment outside the country of incorporation of the controlled foreign corporation has substantially the same effect as if such branch or similar establishment were a wholly owned subsidiary corporation deriving such income, under regulations prescribed by the Secretary the income attributable to the carrying on of such activities of such branch or similar establishment shall be treated as income derived by a wholly owned subsidiary of the controlled foreign corporation and shall constitute foreign base company sales income of the controlled foreign corporation.

(3) Related person defined

For purposes of this section, a person is a related person with respect to a controlled foreign corporation, if—

(A) such person is an individual, corporation, partnership, trust, or estate which controls, or is controlled by, the controlled foreign corporation, or

(B) such person is a corporation, partnership, trust, or estate which is controlled by the same person or persons which control the controlled foreign corporation.

For purposes of the preceding sentence, control means, with respect to a corporation, the ownership, directly or indirectly, of stock possessing more than 50 percent of the total voting power of all classes of stock entitled to vote or of the total value of stock of such corporation. In the case of a partnership, trust, or estate, control means the ownership, directly or indirectly, of more than 50 percent (by value) of the beneficial interests in such partnership, trust, or estate. For purposes of this paragraph, rules similar to the rules of section 958 shall apply.

(4) Special rule for certain timber products

For purposes of subsection (a)(2), the term ''foreign base company sales income'' includes any income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with—

(A) the sale of any unprocessed timber referred to in section 865(b), or

(B) the milling of any such timber outside the United States.

Subpart G shall not apply to any amount treated as subpart F income by reason of this paragraph.

(e) Foreign base company services income

(1) In general

For purposes of subsection (a)(3), the term ''foreign base company services income'' means income (whether in the form of compensation, commissions, fees, or otherwise) derived in connection with the performance of technical, managerial, engineering, architectural, scientific, skilled, industrial, commercial, or like services which—

(A) are performed for or on behalf of any related person (within the meaning of subsection (d)(3)), and

(B) are performed outside the country under the laws of which the controlled foreign corporation is created or organized.

(2) Exception

Paragraph (1) shall not apply to income derived in connection with the performance of services which are directly related to—

(A) the sale or exchange by the controlled foreign corporation of property manufactured, produced, grown, or extracted by it and which are performed before the time of the sale or exchange, or

(B) an offer or effort to sell or exchange such property.

Paragraph (1) shall also not apply to income which is exempt insurance income (as defined in section 953(e)) or which is not treated as foreign personal holding income by reason of subsection (c)(2)(C)(ii), (h), or (i).

[(f) Repealed. Pub. L. 108–357, title IV, § 415(a)(2), Oct. 22, 2004, 118 Stat. 1511]

(g) Foreign base company oil related income

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''foreign base company oil related income'' means foreign oil related income (within the meaning of paragraphs (2) and (3) of section 907(c)) other than income derived from a source within a foreign country in connection with—

(A) oil or gas which was extracted from an oil or gas well located in such foreign country, or

(B) oil, gas, or a primary product of oil or gas which is sold by the foreign corporation or a related person for use or consumption within such country or is loaded in such country on a vessel or aircraft as fuel for such vessel or aircraft.

Such term shall not include any foreign personal holding company income (as defined in subsection (c)).

(2) Paragraph (1) applies only where corporation has produced 1,000 barrels per day or more

(A) In general

The term ''foreign base company oil related income'' shall not include any income of a foreign corporation if such corporation is not a large oil producer for the taxable year.

(B) Large oil producer

For purposes of subparagraph (A), the term ''large oil producer'' means any corporation if, for the taxable year or for the preceding taxable year, the average daily production of foreign crude oil and natural gas of the related group which includes such corporation equaled or exceeded 1,000 barrels.

(C) Related group

The term ''related group'' means a group consisting of the foreign corporation and any other person who is a related person with respect to such corporation.

(D) Average daily production of foreign crude oil and natural gas

For purposes of this paragraph, the average daily production of foreign crude oil or natural gas of any related group for any taxable year (and the conversion of cubic feet of natural gas into barrels) shall be determined under rules similar to the rules of section 613A except that only crude oil or natural gas from a well located outside the United States shall be taken into account.

(h) Special rule for income derived in the active conduct of banking, financing, or similar businesses

(1) In general

For purposes of subsection (c)(1), foreign personal holding company income shall not include qualified banking or financing income of an eligible controlled foreign corporation.

(2) Eligible controlled foreign corporation

For purposes of this subsection—

(A) In general

The term ''eligible controlled foreign corporation'' means a controlled foreign corporation which—

(i) is predominantly engaged in the active conduct of a banking, financing, or similar business, and

(ii) conducts substantial activity with respect to such business.

(B) Predominantly engaged

A controlled foreign corporation shall be treated as predominantly engaged in the active conduct of a banking, financing, or similar business if—

(i) more than 70 percent of the gross income of the controlled foreign corporation is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons,

(ii) it is engaged in the active conduct of a banking business and is an institution licensed to do business as a bank in the

United States (or is any other corporation not so licensed which is specified by the Secretary in regulations), or

(iii) it is engaged in the active conduct of a securities business and is registered as a securities broker or dealer under section 15(a) of the Securities Exchange Act of 1934 or is registered as a Government securities broker or dealer under section 15C(a) of such Act (or is any other corporation not so registered which is specified by the Secretary in regulations).

(3) Qualified banking or financing income

For purposes of this subsection—

(A) In general

The term ''qualified banking or financing income'' means income of an eligible controlled foreign corporation which—

(i) is derived in the active conduct of a banking, financing, or similar business by—

(I) such eligible controlled foreign corporation, or

(II) a qualified business unit of such eligible controlled foreign corporation,

(ii) is derived from one or more transactions—

(I) with customers located in a country other than the United States, and

(II) substantially all of the activities in connection with which are conducted directly by the corporation or unit in its home country, and

(iii) is treated as earned by such corporation or unit in its home country for purposes of such country's tax laws.

(B) Limitation on nonbanking and nonsecurities businesses

No income of an eligible controlled foreign corporation not described in clause (ii) or (iii) of paragraph (2)(B) (or of a qualified business unit of such corporation) shall be treated as qualified banking or financing income unless more than 30 percent of such corporation's or unit's gross income is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons and which are located within such corporation's or unit's home country.

(C) Substantial activity requirement for cross border income

The term ''qualified banking or financing income'' shall not include income derived from 1 or more transactions with customers located in a country other than the home country of the eligible controlled foreign corporation or a qualified business unit of such corporation unless such corporation or unit conducts substantial activity with respect to a banking, financing, or similar business in its home country.

(D) Determinations made separately

For purposes of this paragraph, the qualified banking or financing income of an eligible controlled foreign corporation and each qualified business unit of such corporation shall be determined separately for such corporation and each such unit by taking into account—

(i) in the case of the eligible controlled foreign corporation, only items of income, deduction, gain, or loss and activities of such corporation not properly allocable or attributable to any qualified business unit of such corporation, and

(ii) in the case of a qualified business unit, only items of income, deduction, gain, or loss and activities properly allocable or attributable to such unit.

(E) Direct conduct of activities

For purposes of subparagraph (A)(ii)(II), an activity shall be treated as conducted directly by an eligible controlled foreign corporation or qualified business unit in its home country if the activity is performed by employees of a related person and—

(i) the related person is an eligible controlled foreign corporation the home country of which is the same as the home country of the corporation or unit to which subparagraph (A)(ii)(II) is being applied,

(ii) the activity is performed in the home country of the related person, and

(iii) the related person is compensated on an arm's-length basis for the performance of the activity by its employees and such compensation is treated as earned by such person in its home country for purposes of the home country's tax laws.

(4) Lending or finance business

For purposes of this subsection, the term ''lending or finance business'' means the business of—

(A) making loans,

(B) purchasing or discounting accounts receivable, notes, or installment obligations,

(C) engaging in leasing (including entering into leases and purchasing, servicing, and disposing of leases and leased assets),

(D) issuing letters of credit or providing guarantees,

(E) providing charge and credit card services, or

(F) rendering services or making facilities available in connection with activities described in subparagraphs (A) through (E) carried on by—

(i) the corporation (or qualified business unit) rendering services or making facilities available, or

(ii) another corporation (or qualified business unit of a corporation) which is a member of the same affiliated group (as defined in section 1504, but determined without regard to section 1504(b)(3)).

(5) Other definitions

For purposes of this subsection—

(A) Customer

The term ''customer'' means, with respect to any controlled foreign corporation or qualified business unit, any person which has a customer relationship with such corporation or unit and which is acting in its capacity as such.

(B) Home country

Except as provided in regulations—

(i) Controlled foreign corporation

The term ''home country'' means, with respect to any controlled foreign corporation, the country under the laws of which the corporation was created or organized.

(ii) Qualified business unit

The term ''home country'' means, with respect to any qualified business unit, the country in which such unit maintains its principal office.

(C) Located

The determination of where a customer is located shall be made under rules prescribed by the Secretary.

(D) Qualified business unit

The term ''qualified business unit'' has the meaning given such term by section 989(a).

(E) Related person

The term ''related person'' has the meaning given such term by subsection (d)(3).

(6) Coordination with exception for dealers

Paragraph (1) shall not apply to income described in subsection (c)(2)(C)(ii) of a dealer in securities (within the meaning of section 475) which is an eligible controlled foreign corporation described in paragraph (2)(B)(iii).

(7) Anti-abuse rules

For purposes of applying this subsection and subsection (c)(2)(C)(ii)—

(A) there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions one of the principal purposes of which is qualifying income or gain for the exclusion under this section, including any transaction or series of transactions a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of such exclusion through the application of this subsection,

(B) there shall be disregarded any item of income, gain, loss, or deduction of an entity which is not engaged in regular and continuous transactions with customers which are not related persons,

(C) there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions utilizing, or doing business with—

(i) one or more entities in order to satisfy any home country requirement under this subsection, or

(ii) a special purpose entity or arrangement, including a securitization, financing, or similar entity or arrangement,

if one of the principal purposes of such transaction or series of transactions is qualifying income or gain for the exclusion under this subsection, and

(D) a related person, an officer, a director, or an employee with respect to any controlled foreign corporation (or qualified business unit) which would otherwise be treated as a customer of such corporation or unit with respect to any transaction shall not be so treated if a principal purpose of such transaction is to satisfy any requirement of this subsection.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, subsection (c)(1)(B)(i), subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2).

(9) Application

This subsection, subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2) shall apply only to taxable years of a foreign corporation beginning after December 31, 1998, and before January 1, 2012, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.

(i) Special rule for income derived in the active conduct of insurance business

(1) In general

For purposes of subsection (c)(1), foreign personal holding company income shall not include qualified insurance income of a qualifying insurance company.

(2) Qualified insurance income

The term ''qualified insurance income'' means income of a qualifying insurance company which is—

(A) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from the investments made by a qualifying insurance company or a qualifying insurance company branch of its reserves allocable to exempt contracts or of 80 percent of its unearned premiums from exempt contracts (as both are determined in the manner prescribed under paragraph (4)), or

(B) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from investments made by a qualifying insurance company or a qualifying insurance company branch of an amount of its assets allocable to exempt contracts equal to—

(i) in the case of property, casualty, or health insurance contracts, one-third of its premiums earned on such insurance contracts during the taxable year (as defined in section 832(b)(4)), and

(ii) in the case of life insurance or annuity contracts, 10 percent of the reserves described in subparagraph (A) for such contracts.

(3) Principles for determining insurance income

Except as provided by the Secretary, for purposes of subparagraphs (A) and (B) of paragraph (2)—

(A) in the case of any contract which is a separate account-type contract (including any variable contract not meeting the requirements of section 817), income credited under such contract shall be allocable only to such contract, and

(B) income not allocable under subparagraph (A) shall be allocated ratably among contracts not described in subparagraph (A).

(4) Methods for determining unearned premiums and reserves

For purposes of paragraph (2)(A)—

(A) Property and casualty contracts

The unearned premiums and reserves of a qualifying insurance company or a qualifying insurance company branch with respect to property, casualty, or health insurance contracts shall be determined using the same methods and interest rates which would be used if such company or branch were subject to tax under subchapter L, except that—

(i) the interest rate determined for the functional currency of the company or branch, and which, except as provided by the Secretary, is calculated in the same manner as the Federal mid-term rate under section 1274(d), shall be substituted for the applicable Federal interest rate, and

(ii) such company or branch shall use the appropriate foreign loss payment pattern.

(B) Life insurance and annuity contracts

(i) In general

Except as provided in clause (ii), the amount of the reserve of a qualifying insurance company or qualifying insurance company branch for any life insurance or annuity contract shall be equal to the greater of—

(I) the net surrender value of such contract (as defined in section 807(e)(1)(A)), or

(II) the reserve determined under paragraph (5).

(ii) Ruling request, etc.

The amount of the reserve under clause (i) shall be the foreign statement reserve for the contract (less any catastrophe, deficiency, equalization, or similar reserves), if, pursuant to a ruling request submitted by the taxpayer or as provided in published guidance, the Secretary determines that the factors taken into account in determining the foreign statement reserve provide an appropriate means of measuring income.

(C) Limitation on reserves

In no event shall the reserve determined under this paragraph for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining foreign statement reserves (less any catastrophe, deficiency, equalization, or similar reserves).

(5) Amount of reserve

The amount of the reserve determined under this paragraph with respect to any contract shall be determined in the same manner as it would be determined if the qualifying insurance company or qualifying insurance company branch were subject to tax under subchapter L, except that in applying such subchapter—

(A) the interest rate determined for the functional currency of the company or branch, and which, except as provided by the Secretary, is calculated in the same manner as the Federal mid-term rate under section 1274(d), shall be substituted for the applicable Federal interest rate,

(B) the highest assumed interest rate permitted to be used in determining foreign statement reserves shall be substituted for the prevailing State assumed interest rate, and

(C) tables for mortality and morbidity which reasonably reflect the current mortality and morbidity risks in the company's or branch's home country shall be substituted for the mortality and morbidity tables otherwise used for such subchapter.

The Secretary may provide that the interest rate and mortality and morbidity tables of a qualifying insurance company may be used for 1 or more of its qualifying insurance company branches when appropriate.

(6) Definitions

For purposes of this subsection, any term used in this subsection which is also used in section 953(e) shall have the meaning given such term by section 953.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1009; amended Pub. L. 91–172, title IX, §909(a), Dec. 30, 1969, 83 Stat. 718; Pub. L. 94–12, title VI, §602(b), (c)(1), (2), (d)(1), (e), Mar. 29, 1975, 89 Stat. 58, 60, 64; Pub. L. 94–455, title X, §§1023(a), 1024(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1620, 1834; Pub. L. 97–248, title II, §212(a)–(e), Sept. 3, 1982, 96 Stat. 451, 452; Pub. L. 98–369, div. A, title I, §137(a), title VII, §712(f), July 18, 1984, 98 Stat. 672, 947; Pub. L. 99–514, title XII, §§1201(c), 1221(a)(1), (b)(3)(B), (c)(1)–(3)(A), (d), (e), 1223(a), title XVIII, §1810(k), Oct. 22, 1986, 100 Stat. 2525, 2549, 2553, 2557, 2830; Pub. L. 100–647, title I, §§1012(i)(12), (14)(A), (18), (20), (25)(B), 1018(u)(38), Nov. 10, 1988, 102 Stat. 3509–3512, 3592; Pub. L. 101–239, title VII, §7811(i)(3), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 103–66, title XIII, §§13233(a)(1), 13235(a)(3), (b), 13239(d), Aug. 10, 1993, 107 Stat. 502, 504, 505, 509; Pub. L. 104–188, title I, §1704(t)(25), Aug. 20, 1996, 110 Stat. 1888; Pub. L. 105–34, title X, §1051(a), (b), title XI, §1175(a), (b), Aug. 5, 1997, 111 Stat. 940, 990, 993; Pub. L. 105–277, div. J, title I, §1005(a), (b)(2), (c)–(e), title IV, §4003(j), Oct. 21, 1998, 112 Stat. 2681–890, 2681–897, 2681–899, 2681–900, 2681–910; Pub. L. 106–170, title V, §§503(a), 532(c)(2)(Q), Dec. 17, 1999, 113 Stat. 1921, 1931; Pub. L. 107–147, title IV, §417(24)(B)(ii), title VI, §614(a)(2), (b)(1), Mar. 9, 2002, 116 Stat. 57, 61; Pub. L. 108–357, title IV, §§412(a), 413(b)(2), 414(a)–(c), 415(a), (b), (c)(2), 416(a), Oct. 22, 2004, 118 Stat. 1505, 1506, 1510, 1511; Pub. L. 109–135, title IV, §§403(m), 412(*ll*), (mm), Dec. 21, 2005, 119 Stat. 2626, 2639; Pub. L. 109–222, title I, §103(a)(2), (b)(1), May 17, 2006, 120 Stat. 346; Pub. L. 109–432, div. A, title IV, §426(a)(1), Dec. 20, 2006, 120 Stat. 2974; Pub. L. 110–172, §§4(a), 11(a)(19), (20), (g)(15)(B), Dec. 29, 2007, 121 Stat. 2475, 2486, 2491; Pub. L. 110–343, div. C, title III, §§303(b), 304(a), Oct. 3, 2008, 122 Stat. 3866, 3867; Pub. L. 111–312, title VII, §§750(a), 751(a), Dec. 17, 2010, 124 Stat. 3320, 3321.)

REFERENCES IN TEXT

Sections 15(a) and 15C(a) of the Securities Exchange Act of 1934, referred to in subsec. (h)(2)(B)(iii), are classified to sections 78*o*(a) and 78*o*–5(a), respectively, of Title 15, Commerce and Trade.

AMENDMENTS

2010—Subsec. (c)(6)(C). Pub. L. 111–312, § 751(a), substituted ''January 1, 2012'' for ''January 1, 2010''.

Subsec. (h)(9). Pub. L. 111–312, § 750(a), substituted ''January 1, 2012'' for ''January 1, 2010''.

2008—Subsec. (c)(6)(C). Pub. L. 110–343, § 304(a), substituted ''January 1, 2010'' for ''January 1, 2009''.

Subsec. (h)(9). Pub. L. 110–343, § 303(b), substituted ''January 1, 2010'' for ''January 1, 2009''.

2007—Subsec. (c)(1)(F). Pub. L. 110–172, § 11(a)(19), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Any item of income, gain, deduction, or loss from a notional principal contract entered into for purposes of hedging any item described in any preceding subparagraph shall not be taken into account for purposes of this subparagraph but shall be taken into account under such other subparagraph.''

Subsec. (c)(1)(H), (I). Pub. L. 110–172, § 11(a)(20), redesignated subpar. (I) as (H).

Subsec. (c)(2)(C)(ii). Pub. L. 110–172, § 11(g)(15)(B), substituted ''section 956(c)(2)(I)'' for ''section 956(c)(2)(J)''.

Subsec. (c)(6)(B), (C). Pub. L. 110–172, § 4(a), added subpar. (B) and redesignated former subpar. (B) as (C).

2006—Subsec. (c)(6). Pub. L. 109–222, § 103(b)(1), added par.(6).

Subsec. (c)(6)(A). Pub. L. 109–432, in first sentence, substituted ''which is neither subpart F income nor income treated as effectively connected with the conduct of a trade or business in the United States'' for ''which is not subpart F income'' and, in last sentence, substituted ''The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including such regulations as may be necessary or appropriate to prevent the abuse of the purposes of this paragraph'' for ''The Secretary shall prescribe such regulations as may be appropriate to prevent the abuse of the purposes of this paragraph''.

Subsec. (h)(9). Pub. L. 109–222, § 103(a)(2), substituted ''January 1, 2009'' for ''January 1, 2007''.

2005—Subsec. (c)(1)(C)(i). Pub. L. 109–135, § 412(*ll*), substituted ''paragraph (5)(A)'' for ''paragraph (4)(A)''.

Subsec. (c)(1)(F). Pub. L. 109–135, § 412(mm), struck out ''Net income from notional principal contracts.'' before ''Any item of income''.

Subsec. (c)(4)(B). Pub. L. 109–135, § 403(m), inserted at end ''If a controlled foreign corporation is treated as owning a capital or profits interest in a partnership under constructive ownership rules similar to the rules of section 958(b), the controlled foreign corporation shall be treated as owning such interest directly for purposes of this subparagraph.''

2004—Subsec. (a)(4). Pub. L. 108–357, § 415(a)(1), struck out par. (4) which read as follows: ''the foreign base company shipping income for the taxable year (determined under subsection (f) and reduced as provided in subsection (b)(5)), and''.

Subsec. (b)(5). Pub. L. 108–357, § 415(c)(2)(A), struck out ''the foreign base company shipping income,'' after ''the foreign base company services income,,''.

Subsec. (b)(6) to (8). Pub. L. 108–357, § 415(c)(2)(B), (C), redesignated par. (8) as (6) and struck out former pars. (6) and (7) which set forth special rules and special exclusion for foreign base company shipping income.

Subsec. (c)(1)(C)(i), (ii). Pub. L. 108–357, § 414(a), amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

''(i) arise out of bona fide hedging transactions reasonably necessary to the conduct of any business by a producer, processor, merchant, or handler of a commodity in the manner in which such business is customarily and usually conducted by others,

''(ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation's business is as an active producer, processor, merchant, or handler of commodities, or''.

Subsec. (c)(1)(I). Pub. L. 108–357, § 413(b)(2), added subpar. (I).

Subsec. (c)(2)(A). Pub. L. 108–357, § 415(b), inserted at end ''For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.''

Subsec. (c)(2)(C)(i). Pub. L. 108–357, § 414(c), inserted ''and transactions involving physical settlement'' after ''(including hedging transactions''.

Subsec. (c)(4). Pub. L. 108–357, § 412(a), added par. (4).

Subsec. (c)(5). Pub. L. 108–357, § 414(b), added par. (5).

Subsec. (f). Pub. L. 108–357, § 415(a)(2), struck out subsec. (f) which defined ''foreign base company shipping income'' for purposes of subsec. (a)(4).

Subsec. (h)(3)(E). Pub. L. 108–357, § 416(a), added subpar. (E).

2002—Subsec. (c)(1)(B). Pub. L. 107–147, § 417(24)(B)(ii), which directed the amendment of Pub. L. 106–170, § 532(c)(2)(Q), was executed to that section as if the amendment were retroactive to the effective date of the amendment by Pub. L. 106–170 to reflect the probable intent of Congress. See 1999 Amendment note below.

Subsec. (h)(9). Pub. L. 107–147, § 614(a)(2), substituted ''January 1, 2007'' for ''January 1, 2002''.

Subsec. (i)(4)(B). Pub. L. 107–147, § 614(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The amount of the reserve of a qualifying insurance company or qualifying insurance company branch for any life insurance or annuity contract shall be equal to the greater of—

''(i) the net surrender value of such contract (as defined in section 807(e)(1)(A)), or

''(ii) the reserve determined under paragraph (5).''

1999—Subsec. (c)(1)(B). Pub. L. 106–170, § 532(c)(2)(Q), as amended by Pub. L. 107–147, § 417(24)(B)(ii), substituted ''section 1221(a)(1)'' for ''section 1221(1)'' in concluding provisions.

Subsec. (h)(9). Pub. L. 106–170, § 503(a), substituted ''taxable years'' for ''the first taxable year'', ''January 1, 2002'' for ''January 1, 2000'', and ''within which any such'' for ''within which such''.

1998—Subsec. (c)(1)(B)(i). Pub. L. 105–277, § 1005(e), inserted ''other than property which gives rise to income not treated as foreign personal holding company income by reason of subsection (h) or (i) for the taxable year'' before comma at end.

Subsec. (c)(2)(C). Pub. L. 105–277, § 1005(c), amended heading and text of subpar. (C), generally. Prior to amendment, text read as follows: ''Except as provided in subparagraph (A), (E), or (G) of paragraph (1) or by regulations, in the case of a regular dealer in property (within the meaning of paragraph (1)(B)), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities), there shall not be taken into account in computing foreign personal holding income any item of income, gain, deduction, or loss from any transaction (including hedging transactions) entered into in the ordinary course of such dealer's trade or business as such a dealer.''

Subsec. (e)(2). Pub. L. 105–277, § 1005(d), inserted ''or'' at end of subpar. (A), substituted a period for '', or'' at end of subpar. (B), and inserted concluding provisions.

Subsec. (e)(2)(C). Pub. L. 105–277, § 4003(j), substituted ''(h)(9)'' for ''(h)(8)''.

Pub. L. 105–277, § 1005(d), struck out subpar. (C) which read as follows: ''in the case of taxable years described in subsection (h)(9), the active conduct by a controlled foreign corporation of a banking, financing, insurance, or similar business, but only if the corporation is predominantly engaged in the active conduct of such busi-

ness (within the meaning of subsection (h)(3)) or is a qualifying insurance company.''

Subsec. (h). Pub. L. 105–277, §1005(a), amended heading and text of subsec. (h) generally. Prior to amendment, text consisted of pars. (1) to (9) relating to special rule for income derived in active conduct of banking, financing, or similar businesses, principles for determining applicable income, meaning of ''predominantly engaged'' for purposes of the special rule, methods of determining unearned premiums and reserves, definitions of certain terms for purposes of subsec. (h), anti-abuse rules, coordination with section 953 of this title, and taxable year applicability of subsec. (h).

Subsec. (i). Pub. L. 105–277, §1005(b)(2), added subsec. (i).

1997—Subsec. (c)(1)(B). Pub. L. 105–34, §1051(a)(2), in concluding provisions, struck out ''In the case of any regular dealer in property, gains and losses from the sale or exchange of any such property or arising out of bona fide hedging transactions reasonably necessary to the conduct of the business of being a dealer in such property shall not be taken into account under this subparagraph.'' before ''Gains and losses'' and ''also'' after ''section 1221(1)''.

Subsec. (c)(1)(F), (G). Pub. L. 105–34, §1051(a)(1), added subpars. (F) and (G).

Subsec. (c)(2)(C). Pub. L. 105–34, §1051(b), added subpar. (C).

Subsec. (e)(2)(C). Pub. L. 105–34, §1175(b), added subpar. (C).

Subsec. (h). Pub. L. 105–34, §1175(a), added subsec. (h).

1996—Subsec. (c)(3)(A)(i). Pub. L. 104–188 amended directory language of Pub. L. 101–239, §7811(i)(3)(A). See 1989 Amendment note below.

1993—Subsec. (b)(8). Pub. L. 103–66, §13235(a)(3)(B), struck out ''(1),'' after ''such corporation under paragraph''.

Subsec. (c)(3)(C). Pub. L. 103–66, §13233(a)(1), added subpar. (C).

Subsec. (d)(4). Pub. L. 103–66, §13239(d), added par. (4).

Subsec. (f). Pub. L. 103–66, §13235(b), inserted at end of concluding provisions ''Except as provided in paragraph (1), such term shall not include any dividend or interest income which is foreign personal holding company income (as defined in subsection (c)).''

Subsec. (g)(1). Pub. L. 103–66, §13235(a)(3)(A), inserted at end ''Such term shall not include any foreign personal holding company income (as defined in subsection (c)).''

1989—Subsec. (c)(3)(A). Pub. L. 101–239, §7811(i)(3)(C), inserted at end ''To the extent provided in regulations, payments made by a partnership with 1 or more corporate partners shall be treated as made by such corporate partners in proportion to their respective interests in the partnership.''

Subsec. (c)(3)(A)(i). Pub. L. 101–239, §7811(i)(3)(A), as amended by Pub. L. 104–188, substituted ''is a corporation created'' for ''is created'' after ''person which (I)''.

Subsec. (c)(3)(A)(ii). Pub. L. 101–239, §7811(i)(3)(B), substituted ''from a corporation which is a related person'' for ''from a related person''.

1988—Subsec. (b)(6), (7). Pub. L. 100–647, §1012(i)(12), struck out ''(determined without regard to the exclusion under paragraph (2) of this subsection)'' after ''paragraph (4) of subsection (a)''.

Subsec. (c)(1)(B). Pub. L. 100–647, §1012(i)(18), (20), added cl. (ii), redesignated former cl. (ii) as (iii), added closing provisions, and struck out former closing provisions which read as follows: ''This subparagraph shall not apply to gain from the sale or exchange of any property which, in the hands of the taxpayer, is property described in section 1221(1) or to gain from the sale or exchange of any property by a regular dealer in such property.''

Subsec. (c)(3)(B). Pub. L. 100–647, §1012(i)(25)(B), inserted before period at end ''or creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation''.

Subsec. (d)(3). Pub. L. 100–647, §1012(i)(14)(A), substituted ''more than 50 percent'' for ''50 percent or more'' in last two sentences.

Subsec. (e)(3). Pub. L. 100–647, §1018(u)(38), related to execution of amendment by Pub. L. 99–514, §1221(b)(3)(B), see 1986 Amendment note below.

1986—Subsec. (a)(5). Pub. L. 99–514, §1221(c)(3)(A)(ii), substituted ''determined under subsection (g)'' for ''determined under subsection (h)''.

Subsec. (b)(2). Pub. L. 99–514, §1221(c)(1), struck out par. (2), exclusion for reinvested shipping income, which read as follows: ''For purposes of subsection (a), foreign base company income does not include foreign base company shipping income to the extent that the amount of such income does not exceed the increase for the taxable year in qualified investments in foreign base company shipping operations of the controlled foreign corporation (as determined under subsection (g)).''

Subsec. (b)(3). Pub. L. 99–514, §1223(a), amended par. (3) generally. Prior to amendment, par. (3), special rule where foreign base company income is less than 10 percent or more than 70 percent of gross income, read as follows: ''For purposes of subsection (a)—

''(A) If the foreign base company income (determined without regard to paragraphs (2) and (5)) is less than 10 percent of gross income, no part of the gross income of the taxable year shall be treated as foreign base company income.

''(B) If the foreign base company income (determined without regard to paragraphs (2) and (5)) exceeds 70 percent of gross income, the entire gross income of the taxable year shall, subject to the provisions of paragraphs (2), (4), and (5), be treated as foreign base company income.''

Subsec. (b)(4). Pub. L. 99–514, §1221(d), amended par. (4) generally. Prior to amendment, par. (4), exception for foreign corporations not availed of to reduce taxes, read as follows: ''For purposes of subsection (a), foreign base company income does not include any item of income received by a controlled foreign corporation if it is established to the satisfaction of the Secretary that neither—

''(A) the creation or organization of such controlled foreign corporation under the laws of the foreign country in which it is incorporated (or, in the case of a controlled foreign corporation which is an acquired corporation, the acquisition of such corporation created or organized under the laws of the foreign country in which it is incorporated), nor

''(B) the effecting of the transaction giving rise to such income through the controlled foreign corporation,

has as one of its significant purposes a substantial reduction of income, war profits, or excess profits or similar taxes. The preceding sentence shall not apply to foreign base company oil related income described in subsection (a)(5).''

Subsec. (b)(5). Pub. L. 99–514, §1201(c), inserted at end ''Except to the extent provided in regulations prescribed by the Secretary, any interest which is paid or accrued by the controlled foreign corporation to any United States shareholder in such corporation (or any controlled foreign corporation related to such a shareholder) shall be allocated first to foreign personal holding company income which is passive income (within the meaning of section 904(d)(2)) of such corporation to the extent thereof. The Secretary may, by regulations, provide that the preceding sentence shall apply also to interest paid or accrued to other persons.''

Subsec. (c). Pub. L. 99–514, §1221(a)(1), amended subsec. (c) generally, substituting pars. (1) to (3) for former provisions which had provided: in par. (1), a reference to definition of ''foreign personal holding company income'' contained in section 553; in par. (2), that all rents would be included in ''foreign personal holding company income'' without regard to whether or not such rents constituted 50 percent or more of gross income; in par. (3), for exclusion of certain income derived in active conduct of a trade or business; and in par. (4), exclusion of certain income received from related persons from being included in ''foreign personal holding company income''. See subsec. (c)(3).

Subsec. (d)(3). Pub. L. 99–514, §1221(e), added subpars. (A) and (B) and concluding provisions and struck out

former subpars. (A) to (C) and concluding provisions which read as follows:

''(A) such person is an individual, partnership, trust, or estate which controls the controlled foreign corporation;

''(B) such person is a corporation which controls, or is controlled by, the controlled foreign corporation; or

''(C) such person is a corporation which is controlled by the same person or persons which control the controlled foreign corporation.

For purposes of the preceding sentence, control means the ownership, directly or indirectly, of stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote. For purposes of this paragraph, the rules for determining ownership of stock prescribed by section 958 shall apply.''

Subsec. (e). Pub. L. 99–514, § 1810(k), in amending subsec. (e) generally, designated existing provisions as par. (1), added par. heading, and substituted subpar. (A) and (B) designations for prior par. (1) and (2) designations, struck out provisions relating to nonapplicability of preceding sentence to services performed in connection with manufactured or grown or extracted property, and provisions determining the place of performance of services for purposes of paragraph (2) with respect to any policy of insurance and reinsurance, and added pars. (2) and (3).

Subsec. (e)(3). Pub. L. 99–514, § 1221(b)(3)(B), and Pub. L. 100–647, § 1018(u)(38), struck out par. (3) as enacted by section 1810(k) of Pub. L. 99–514, which read as follows: ''For purposes of paragraph (1), in the case of any services performed with respect to any policy of insurance or reinsurance with respect to which the primary insured is a related person (within the meaning of section 864(d)(4))—

''(A) such primary insured shall be treated as a related person for purposes of paragraph (1)(A) (whether or not the requirements of subsection (d)(3) are met),

''(B) such services shall be treated as performed in the country within which the insured hazards, risks, losses, or liabilities occur, and

''(C) except as otherwise provided in regulations by the Secretary, rules similar to the rules of section 953(b) shall be applied in determining the income from such services.''

Subsec. (f). Pub. L. 99–514, § 1221(c)(2), inserted last sentence.

Subsecs. (g), (h). Pub. L. 99–514, § 1221(c)(3)(A)(i), redesignated subsec. (h) as (g) and struck out former subsec. (g), increase in qualified investments in foreign base company shipping operations, which read as follows: ''For purposes of subsection (b)(2), the increase for any taxable year in qualified investments in foreign base company shipping operations of any controlled foreign corporation is the amount by which—

''(1) the qualified investments in foreign base company shipping operations (as defined in section 955(b)) of the controlled foreign corporation at the close of the taxable year, exceed

''(2) the qualified investments in foreign base company shipping operations (as so defined) of the controlled foreign corporation at the close of the preceding taxable year.''

1984—Subsec. (e). Pub. L. 98–369, § 137(a), inserted provision that for purposes of par. (2) services performed with respect to any insurance or reinsurance policy be treated as performed in the country of risk.

Subsec. (h)(1). Pub. L. 98–369, § 712(f), substituted ''paragraphs (2) and (3) of section 907(c)'' for ''section 907(c)(2)''.

1982—Subsec. (a)(5). Pub. L. 97–248, § 212(a), (e), added par. (5).

Subsec. (b)(4). Pub. L. 97–248, § 212(d), inserted at end ''The preceding sentence shall not apply to foreign base company oil related income described in subsection (a)(5).''

Subsec. (b)(5). Pub. L. 97–248, § 212(b)(1), substituted '', the foreign base company shipping income, and the foreign base company oil related income'' for ''and the foreign base company shipping income''.

Subsec. (b)(8). Pub. L. 97–248, § 212(b)(2), added par. (8).

Subsec. (h). Pub. L. 97–248, § 212(c), added subsec. (h).

1976—Subsecs. (b)(4), (5). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(7). Pub. L. 94–455, § 1024(a), added par. (7).

Subsec. (c)(3)(C). Pub. L. 94–455, § 1023(a), added subpar. (C).

1975—Subsec. (a)(4). Pub. L. 94–12, § 602(d)(1)(A), added par. (4).

Subsec. (b)(1). Pub. L. 94–12, § 602(c)(1), struck out subsec. (b)(1) which related to the exclusion of certain dividends, interest, and gains from qualified investments in less developed countries.

Subsec. (b)(2). Pub. L. 94–12, § 602(d)(1)(B), substituted ''foreign base company shipping income to the extent that the amount of such income does not exceed the increase for the taxable year in qualified investments in foreign base company shipping operations of the controlled foreign corporation (as determined under subsection (g))'' for ''income derived from, or in connection with, the use (or hiring or leasing for use) of any aircraft or vessel in foreign commerce, or the performance of services directly related to the use of any such aircraft or vessel'' in text and ''Exclusion for reinvested shipping income'' for ''Exclusion of certain shipping income'' in heading.

Subsec. (b)(3). Pub. L. 94–12, § 602(d)(1)(C), (D), (e), substituted ''10 percent'' for ''30 percent'' in heading, substituted ''paragraphs (2) and (5)'' for ''paragraphs (1) and (5)'' and ''10 percent'' for ''30 percent'' in subpar. (A), and substituted ''paragraphs (2) and (5)'' for ''paragraphs (1) and (5)'' and ''paragraphs (2), (4), and (5)'' for ''paragraphs (1), (2), (4), and (5)'' in subpar. (B).

Subsec. (b)(5). Pub. L. 94–12, § 602(d)(1)(E), substituted ''the foreign base company services income, and the foreign base company shipping income'' for ''and the foreign base company services income''.

Subsec. (b)(6). Pub. L. 94–12, § 602(d)(1)(F), added par. (6).

Subsec. (d)(1). Pub. L. 94–12, § 602(b), provided that for purposes of subsec. (d) personal property does not include agricultural commodities which are not grown in the United States in commercially marketable quantities.

Subsecs. (f), (g). Pub. L. 94–12, § 602(c)(2), (d)(1)(G), added subsecs. (f) and (g).

1969—Subsec. (b)(4). Pub. L. 91–172 inserted reference to a foreign corporation which is an acquired corporation, and made the effecting of a transaction giving rise to foreign base income through the controlled foreign corporation subject to the Secretary's power to disallow inclusion of any item of such income where such inclusion will have one of the effects prescribed by this section.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 750(a) of Pub. L. 111–312 applicable to taxable years of foreign corporations beginning after Dec. 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends, see section 750(c) of Pub. L. 111–312, set out as a note under section 953 of this title.

Pub. L. 111–312, title VII, § 751(b), Dec. 17, 2010, 124 Stat. 3321, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title III, § 304(b), Oct. 3, 2008, 122 Stat. 3867, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2007, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 4(a) of Pub. L. 110–172 effective as if included in the provisions of the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. 109–222, to which such amendment relates, with certain exceptions, see section 4(d) of Pub. L. 110–172, set out as a note under section 355 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–432, div. A, title IV, §426(a)(2), Dec. 20, 2006, 120 Stat. 2974, provided that: ''The amendments made by this subsection [amending this section] shall take effect as if included in section 103(b) of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109–222].''

Pub. L. 109–222, title I, §103(b)(2), May 17, 2006, 120 Stat. 347, provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2005, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 403(m) of Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §412(b), Oct. 22, 2004, 118 Stat. 1506, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

Amendment by section 413(b)(2) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–357, title IV, §414(d), Oct. 22, 2004, 118 Stat. 1511, provided that: ''The amendments made by this section [amending this section] shall apply to transactions entered into after December 31, 2004.''

Amendment by section 415(a), (b), (c)(2) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 415(d) of Pub. L. 108–357, set out as a note under section 952 of this title.

Pub. L. 108–357, title IV, §416(b), Oct. 22, 2004, 118 Stat. 1512, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of such foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of such foreign corporations end.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 614(a)(2), (b)(1) of Pub. L. 107–147 applicable to taxable years beginning after Dec. 31, 2001, see section 614(c) of Pub. L. 107–147, set out as a note under section 953 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 503(a) of Pub. L. 106–170 applicable to taxable years beginning after Dec. 31, 1999, see section 503(c) of Pub. L. 106–170, set out as a note under section 953 of this title.

Amendment by section 532(c)(2)(Q) of Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 4003(j) of Pub. L. 105–277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 4003(*l*) of Pub. L. 105–277, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1051(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].''

Section 1175(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to the first full taxable year of a foreign corporation beginning after December 31, 1997, and before January 1, 1999, and to taxable years of United States shareholders with or within which such taxable year of such foreign corporation ends.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13233(a)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years of controlled foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end.''

Amendment by section 13235(a)(3) and (b) of Pub. L. 103–66 applicable to taxable years beginning after Dec. 31, 1992, see section 13235(c) of Pub. L. 103–66, set out as a note under section 904 of this title.

Amendment by section 13239(d) of Pub. L. 103–66 applicable to sales, exchanges, or other dispositions after Aug. 10, 1993, see section 13239(e) of Pub. L. 103–66, set out as a note under section 865 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1201(c) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1201(e) of Pub. L. 99–514, set out as a note under section 904 of this title.

Section 1221(g) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1012(i)(13), Nov. 10, 1988, 102 Stat. 3509, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 864, 952, 953, 955, and 957 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1986.

''(2) SPECIAL RULE FOR REPEAL OF EXCLUSION FOR REINVESTMENT SHIPPING INCOME.—

''(A) IN GENERAL.—In the case of any qualified controlled foreign corporation—

''(i) the amendments made by subsection (c) [amending this section and section 955 of this title] shall apply to taxable years ending on or after January 1, 1992, and

''(ii) sections 955(a)(1)(A) and 955(a)(2)(A) of the Internal Revenue Code of 1986 (as amended by subsection (c)(3)) shall be applied by substituting 'ending before 1992' for 'beginning before 1987'.

''(B) QUALIFIED CONTROLLED FOREIGN CORPORATION.—For purposes of subparagraph (A), the term 'qualified controlled foreign corporation' means any controlled foreign corporation (as defined in section 957 of such Code)—

''(i) if the United States agent of such corporation is a domestic corporation incorporated on March 13, 1951, and

''(ii) if—

''(I) the certificate of incorporation of such corporation is dated November 23, 1963, and

''(II) such corporation has a wholly owned subsidiary and its certificate of incorporation is dated November 2, 1965.

''(3) EXCEPTION FOR CERTAIN REINSURANCE CONTRACTS.—

''(A) IN GENERAL.—In the case of the 1st 3 taxable years of a qualified controlled foreign insurer beginning after December 31, 1986, the amendments made by this section shall not apply to the phase-in percentage of any qualified reinsurance income.

''(B) PHASE-IN PERCENTAGE.—For purposes of subparagraph (A):

"In the case of taxable years beginning in:	**The phase-in percentage is:**
1987	75
1988	50
1989	25.

''(C) QUALIFIED CONTROLLED FOREIGN INSURER.—For purposes of this paragraph, the term 'qualified controlled foreign insurer' means—

''(i) any controlled foreign corporation which on August 16, 1986, was a member of an affiliated group (as defined in section 1504(a) of the Internal Revenue Code of 1986 without regard to subsection (b)(3) thereof) which had as its common parent a corporation incorporated in Delaware on June 9, 1967, with executive offices in New York, New York, or

''(ii) any controlled foreign corporation which on August 16, 1986, was a member of an affiliated group (as so defined) which had as its common parent a corporation incorporated in Delaware on November 3, 1981, with executive offices in Philadelphia, Pennsylvania.

''(D) QUALIFIED REINSURANCE INCOME.—For purposes of this paragraph, the term 'qualified reinsurance income' means any insurance income attributable to risks (other than risks described in section 953(a) or 954(e) of such Code as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) assumed under a reinsurance contract. For purposes of this subparagraph, insurance income shall mean the underwriting income (as defined in section 832(b)(3) of such Code) and investment income derived from an amount of assets (to be segregated and separately identified) equivalent to the ordinary and necessary insurance reserves and necessary surplus equal to ⅓ of earned premium attributable to such contracts. For purposes of this paragraph, the amount of qualified reinsurance income shall not exceed the amount of insurance income from reinsurance contracts for calendar year 1985. In the case of controlled foreign corporations described in subparagraph (C)(ii), the preceding sentence shall not apply and the qualified reinsurance income of any such corporation shall not exceed such corporation's proportionate share of $27,000,000 (determined on the basis of respective amounts of qualified reinsurance income determined without regard to this subparagraph).''

Amendment by section 1223(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 1223(c) of Pub. L. 99–514, set out as a note under section 864 of this title.

Amendment by section 1810(k) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 137(b) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years of controlled foreign corporations beginning after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 712(f) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 212(f) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1982, and to taxable years of United States shareholders in which, or with which, such taxable years of foreign corporations end.''

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1023(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end.''

Section 1024(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end.''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–12 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94–12, set out as an Effective Date note under section 955 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 909(b) of Pub. L. 91–172 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after October 9, 1969.''

LINE ITEM VETO

Section 1175 of Pub. L. 105–34, amending this section and enacting provisions set out as a note above, was subject to line item veto by the President, Cancellation No. 97–1, signed Aug. 11, 1997, 62 F.R. 43266, Aug. 12, 1997. For decision holding line item veto unconstitutional, see *Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998).

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 1201(c) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included

in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100–647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SPECIAL RULE FOR APPLICATION OF SECTION 954 TO CERTAIN DIVIDENDS

Section 1227 of Pub. L. 99–514 provided that:

''(a) IN GENERAL.—For purposes of section 954(c)(3)(A) of the Internal Revenue Code of 1986, any dividends received by a qualified controlled foreign corporation (within the meaning of section 951 of such Code) during any of its 1st 5 taxable years beginning after December 31, 1986, with respect to its 32.7 percent interest in a Brazilian corporation shall be treated as if such Brazilian corporation were a related person to the qualified controlled foreign corporation to the extent the Brazilian corporation's income is attributable to its interest in the trade or business of mining in Brazil.

''(b) QUALIFIED CONTROLLED FOREIGN CORPORATION.—For purposes of this section, a qualified controlled foreign corporation is a corporation the greater than 99 percent shareholder of which is a company originally incorporated in Montana on July 9, 1951 (the name of which was changed on August 10, 1966).

''(c) EFFECTIVE DATE.—The amendment made by this section shall apply to dividends received after December 31, 1986.''

§955. Withdrawal of previously excluded subpart F income from qualified investment

(a) General rules

(1) Amount withdrawn

For purposes of this subpart, the amount of previously excluded subpart F income of any controlled foreign corporation withdrawn from investment in foreign base company shipping operations for any taxable year is an amount equal to the decrease in the amount of qualified investments in foreign base company shipping operations of the controlled foreign corporation for such year, but only to the extent that the amount of such decrease does not exceed an amount equal to—

(A) the sum of the amounts excluded under section 954(b)(2) from the foreign base company income of such corporation for all prior taxable years beginning before 1987, reduced by

(B) the sum of the amounts of previously excluded subpart F income withdrawn from investment in foreign base company shipping operations of such corporation determined under this subsection for all prior taxable years.

(2) Decrease in qualified investments

For purposes of paragraph (1), the amount of the decrease in qualified investments in foreign base company shipping operations of any controlled foreign corporation for any taxable year is the amount by which—

(A) the amount of qualified investments in foreign base company shipping operations of the controlled foreign corporation as of the close of the last taxable year beginning before 1987 (to the extent such amount exceeds the sum of the decreases in qualified investments determined under this paragraph for prior taxable years beginning after 1986), exceeds

(B) the amount of qualified investments in foreign base company shipping operations of the controlled foreign corporation at the close of the taxable year,

to the extent that the amount of such decrease does not exceed the sum of the earnings and profits for the taxable year and the earnings and profits accumulated for prior taxable years beginning after December 31, 1975, and the amount of previously excluded subpart F income invested in less developed country corporations described in section 955(c)(2) (as in effect before the enactment of the Tax Reduction Act of 1975) to the extent attributable to earnings and profits accumulated for taxable years beginning after December 31, 1962. For purposes of this paragraph, if qualified investments in foreign base company shipping operations are disposed of by the controlled foreign corporation during the taxable year, the amount of the decrease in qualified investments in foreign base company shipping operations of such controlled foreign corporations for such year shall be reduced by an amount equal to the amount (if any) by which the losses on such dispositions during such year exceed the gains on such dispositions during such year.

(3) Pro rata share of amount withdrawn

In the case of any United States shareholder, the pro rata share of the amount of previously excluded subpart F income of any controlled foreign corporation withdrawn from investment in foreign base company shipping operations for any taxable year is his pro rata share of the amount determined under paragraph (1).

(b) Qualified investments in foreign base company shipping operations

(1) In general

For purposes of this subpart, the term ''qualified investments in foreign base company shipping operations'' means investments in—

(A) any aircraft or vessel used in foreign commerce, and

(B) other assets which are used in connection with the performance of services directly related to the use of any such aircraft or vessel.

Such term includes, but is not limited to, investments by a controlled foreign corporation in stock or obligations of another controlled foreign corporation which is a related person (within the meaning of section 954(d)(3)) and which holds assets described in the preceding sentence, but only to the extent that such assets are so used.

(2) Qualified investments by related persons

For purposes of determining the amount of qualified investments in foreign based com-

pany shipping operations, an investment (or a decrease in investment) in such operations by one or more controlled foreign corporations may, under regulations prescribed by the Secretary, be treated as an investment (or a decrease in investment) by another corporation which is a controlled foreign corporation and is a related person (as defined in section 954(d)(3) with respect to the corporation actually making or withdrawing the investment.

(3) Special rule

For purposes of this subpart, a United States shareholder of a controlled foreign corporation may, under regulations prescribed by the Secretary, elect to make the determinations under subsection (a)(2) of this section and under subsection (g) of section 954 as of the close of the years following the years referred to in such subsections, or as of the close of such longer period of time as such regulations may permit, in lieu of on the last day of such years. Any election under this paragraph made with respect to any taxable year shall apply to such year and to all succeeding taxable years unless the Secretary consents to the revocation of such election.

(4) Amount attributable to property

The amount taken into account under this subpart with respect to any property described in paragraph (1) shall be its adjusted basis, reduced by any liability to which such property is subject.

(5) Income excluded under prior law

Amounts invested in less developed country corporations described in section 955(c)(2) (as in effect before the enactment of the Tax Reduction Act of 1975) shall be treated as qualified investments in foreign base company shipping operations and shall not be treated as investments in less developed countries for purposes of section 951(a)(1)(A)(ii).

(Added Pub. L. 94–12, title VI, § 602(d)(3)(A), Mar. 29, 1975, 89 Stat. 62; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title XII, § 1221(c)(3)(B), (C), Oct. 22, 1986, 100 Stat. 2553; Pub. L. 100–647, title I, § 1012(i)(11), Nov. 10, 1988, 102 Stat. 3509.)

REFERENCES IN TEXT

Section 955(c)(2) (as in effect before the enactment of the Tax Reduction Act of 1975), referred to in subsecs. (a)(2) and (b)(5), refers to section 955(c)(2) as added by Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1013, and as in effect from 1962 until the repeal of that section and the enactment of this section by Pub. L. 94–12.

The Tax Reduction Act of 1975, referred to in subsecs. (a)(2) and (b)(5), is Pub. L. 94–12, Mar. 29, 1975, 89 Stat. 26, as amended, which was enacted Mar. 29, 1975. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 1 of this title and Tables.

PRIOR PROVISIONS

A prior section 955, added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1013, related to investments in less developed countries and dealing with less developed country corporations, prior to repeal by Pub. L. 94–12, title VI, § 602(c)(5), Mar. 29, 1975, 89 Stat. 59.

AMENDMENTS

1988—Subsec. (a)(2)(A). Pub. L. 100–647 inserted ''(to the extent such amount exceeds the sum of the decreases in qualified investments determined under this paragraph for prior taxable years beginning after 1986)'' after ''beginning before 1987''.

1986—Subsec. (a)(1)(A). Pub. L. 99–514, § 1221(c)(3)(B), inserted ''beginning before 1987'' after ''all prior taxable years''.

Subsec. (a)(2)(A). Pub. L. 99–514, § 1221(c)(3)(C), substituted ''as of the close of the last taxable year beginning before 1987'' for ''at the close of the preceding taxable year''.

1976—Subsec. (b)(2), (3). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99–514, set out as a note under section 954 of this title.

EFFECTIVE DATE

Section 602(f) of Pub. L. 94–12, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting this section, amending sections 851, 902, 951, and 954 of this title, and repealing section 963 and former section 955 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end.''

§ 956. Investment of earnings in United States property

(a) General rule

In the case of any controlled foreign corporation, the amount determined under this section with respect to any United States shareholder for any taxable year is the lesser of—

(1) the excess (if any) of—

(A) such 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 such taxable year, over

(B) the amount of earnings and profits described in section 959(c)(1)(A) with respect to such shareholder, or

(2) such shareholder's pro rata share of the applicable earnings of such controlled foreign corporation.

The amount taken into account under paragraph (1) with respect to any property shall be its adjusted basis as determined for purposes of computing earnings and profits, reduced by any liability to which the property is subject.

(b) Special rules

(1) Applicable earnings

For purposes of this section, the term ''applicable earnings'' means, with respect to any controlled foreign corporation, the sum of—

(A) the amount (not including a deficit) referred to in section 316(a)(1) to the extent such amount was accumulated in prior taxable years, and

(B) the amount referred to in section 316(a)(2),

but reduced by distributions made during the taxable year and by earnings and profits described in section 959(c)(1).

(2) Special rule for U.S. property acquired before corporation is a controlled foreign corporation

In applying subsection (a) to any taxable year, there shall be disregarded any item of United States property which was acquired by the controlled foreign corporation before the first day on which such corporation was treated as a controlled foreign corporation. The aggregate amount of property disregarded under the preceding sentence shall not exceed the portion of the applicable earnings of such controlled foreign corporation which were accumulated during periods before such first day.

(3) Special rule where corporation ceases to be controlled foreign corporation

If any foreign corporation ceases to be a controlled foreign corporation during any taxable year—

(A) the determination of any United States shareholder's pro rata share shall be made on the basis of stock owned (within the meaning of section 958(a)) by such shareholder on the last day during the taxable year on which the foreign corporation is a controlled foreign corporation,

(B) the average referred to in subsection (a)(1)(A) for such taxable year shall be determined by only taking into account quarters ending on or before such last day, and

(C) in determining applicable earnings, the amount taken into account by reason of being described in paragraph (2) of section 316(a) shall be the portion of the amount so described which is allocable (on a pro rata basis) to the part of such year during which the corporation is a controlled foreign corporation.

(c) United States property defined

(1) In general

For purposes of subsection (a), the term ''United States property'' means any property acquired after December 31, 1962, which is—

(A) tangible property located in the United States;

(B) stock of a domestic corporation;

(C) an obligation of a United States person; or

(D) any right to the use in the United States of—

(i) a patent or copyright,

(ii) an invention, model, or design (whether or not patented),

(iii) a secret formula or process, or

(iv) any other similar right,

which is acquired or developed by the controlled foreign corporation for use in the United States.

(2) Exceptions

For purposes of subsection (a), the term ''United States property'' does not include—

(A) obligations of the United States, money, or deposits with—

(i) any bank (as defined by section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)), without regard to subparagraphs (C) and (G) of paragraph (2) of such section), or

(ii) any corporation not described in clause (i) with respect to which a bank holding company (as defined by section 2(a) of such Act) or financial holding company (as defined by section 2(p) of such Act) owns directly or indirectly more than 80 percent by vote or value of the stock of such corporation;

(B) property located in the United States which is purchased in the United States for export to, or use in, foreign countries;

(C) 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;

(D) any aircraft, railroad rolling stock, vessel, motor vehicle, or container used in the transportation of persons or property in foreign commerce and used predominantly outside the United States;

(E) an amount of assets of an insurance company equivalent to the unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business attributable to contracts which are not contracts described in section 953(a)(1);[1]

(F) the stock or obligations of a domestic corporation which is neither a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, nor a domestic corporation, 25 percent or more of the total combined voting power of which, immediately after the acquisition of any stock in such domestic corporation by the controlled foreign corporation, is owned, or is considered as being owned, by such United States shareholders in the aggregate;

(G) any movable property (other than a vessel or aircraft) which is used for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or under such waters when used on the Continental Shelf of the United States;

(H) an amount of assets of the controlled foreign corporation equal to the earnings and profits accumulated after December 31, 1962, and excluded from subpart F income under section 952(b);

(I) deposits of cash or securities made or received on commercial terms in the ordinary course of a United States or foreign person's business as a dealer in securities or in commodities, but only to the extent such deposits are made or received as collateral or margin for (i) a securities loan, notional principal contract, options contract, forward

[1] See References in Text note below.

contract, or futures contract, or (ii) any other financial transaction in which the Secretary determines that it is customary to post collateral or margin;

(J) 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;

(K) securities acquired and held by a controlled foreign corporation in the ordinary course of its business as a dealer in securities if—

(i) the dealer accounts for the securities as securities held primarily for sale to customers in the ordinary course of business, and

(ii) the dealer disposes of the securities (or such securities mature while held by the dealer) within a period consistent with the holding of securities for sale to customers in the ordinary course of business; and

(L) an obligation of a United States person which—

(i) is not a domestic corporation, and

(ii) is not—

(I) a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, or

(II) a partnership, estate, or trust in which the controlled foreign corporation, or any related person (as defined in section 954(d)(3)), is a partner, beneficiary, or trustee immediately after the acquisition of any obligation of such partnership, estate, or trust by the controlled foreign corporation.

For purposes of subparagraphs (I), (J), and (K), the term ''dealer in securities'' has the meaning given such term by section 475(c)(1), and the term ''dealer in commodities'' has the meaning given such term by section 475(e), except that such term shall include a futures commission merchant.

(3) Certain trade or service receivables acquired from related United States persons

(A) In general

Notwithstanding paragraph (2) (other than subparagraph (H) thereof), the term ''United States property'' includes any trade or service receivable if—

(i) such trade or service receivable is acquired (directly or indirectly) from a related person who is a United States person, and

(ii) the obligor under such receivable is a United States person.

(B) Definitions

For purposes of this paragraph, the term ''trade or service receivable'' and ''related person'' have the respective meanings given to such terms by section 864(d).

(d) Pledges and guarantees

For purposes of subsection (a), a controlled foreign corporation shall, under regulations prescribed by the Secretary, be considered as holding an obligation of a United States person if such controlled foreign corporation is a pledgor or guarantor of such obligations.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to prevent the avoidance of the provisons[2] of this section through reorganizations or otherwise.

(Added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1015; amended Pub. L. 94–455, title X, § 1021(a), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1618, 1834; Pub. L. 98–369, div. A, title I, § 123(b), title VIII, § 801(d)(8), July 18, 1984, 98 Stat. 646, 996; Pub. L. 99–514, title XVIII, § 1810(c)(1), Oct. 22, 1986, 100 Stat. 2824; Pub. L. 103–66, title XIII, § 13232(a), (b), Aug. 10, 1993, 107 Stat. 501; Pub. L. 104–188, title I, § 1501(b)(2), (3), Aug. 20, 1996, 110 Stat. 1825; Pub. L. 105–34, title XI, § 1173(a), title XVI, § 1601(e), Aug. 5, 1997, 111 Stat. 988, 1090; Pub. L. 108–357, title IV, § 407(a), (b), title VIII, § 837(a), Oct. 22, 2004, 118 Stat. 1498, 1499, 1596; Pub. L. 110–172, § 11(g)(15)(A), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

Section 953(a)(1), referred to in subsec. (c)(2)(E), was subsequently amended, and section 953(a)(1) no longer describes contracts. However, contracts are described elsewhere in that section.

AMENDMENTS

2007—Subsec. (c)(2). Pub. L. 110–172, § 11(g)(15)(A)(ii), substituted ''subparagraphs (I), (J), and (K)'' for ''subparagraphs (J), (K), and (L)'' in concluding provisions.

Subsec. (c)(2)(I) to (M). Pub. L. 110–172, § 11(g)(15)(A)(i), redesignated subpars. (J) to (M) as (I) to (L), respectively, and struck out former subpar. (I) which read as follows: ''to the extent provided in regulations prescribed by the Secretary, property which is otherwise United States property which is held by a FSC and which is related to the export activities of such FSC;''.

2004—Subsec. (c)(2). Pub. L. 108–357, § 407(b), substituted '', (K), and (L)'' for ''and (K)'' in concluding provisions.

Subsec. (c)(2)(A). Pub. L. 108–357, § 837(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''obligations of the United States, money, or deposits with persons carrying on the banking business;''.

Subsec. (c)(2)(L), (M). Pub. L. 108–357, § 407(a), added subpars. (L) and (M).

1997—Subsec. (b)(1)(A). Pub. L. 105–34, § 1601(e), inserted ''to the extent such amount was accumulated in prior taxable years'' after ''section 316(a)(1)''.

Subsec. (c)(2). Pub. L. 105–34, § 1173(a), added subpars. (J) and (K) and concluding provisions.

1996—Subsec. (b)(1). Pub. L. 104–188, § 1501(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'applicable earnings' has the meaning given to such term by section 956A(b), except that the provisions of such section excluding earnings and profits accumulated in taxable years beginning before October 1, 1993, shall be disregarded.''

Subsec. (b)(3). Pub. L. 104–188, § 1501(b)(3), reenacted heading without change and amended text generally.

[2] So in original. Probably should be ''provisions''.

Prior to amendment, text read as follows: ''Rules similar to the rules of section 956A(e) shall apply for purposes of this section.''

1993—Subsec. (a). Pub. L. 103–66, §13232(a)(2), added subsec. (a) and struck out former subsec. (a) which consisted of introductory provisions and pars. (1) to (3) setting out general rules for calculating amount of earnings of a controlled foreign corporation invested in United States and pro rata share of the increase for any taxable year in earnings of such a corporation invested in United States property.

Subsecs. (b) to (d). Pub. L. 103–66, §13232(a), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

Subsec. (e). Pub. L. 103–66, §13232(b), added subsec. (e).

1986—Subsec. (b)(3)(A). Pub. L. 99–514 inserted ''(other than subparagraph (H) thereof)''.

1984—Subsec. (b)(2)(I). Pub. L. 98–369, §801(d)(8), added subpar. (I).

Subsec. (b)(3). Pub. L. 98–369, §123(b), added par. (3).

1976—Subsec. (b)(2)(F) to (H). Pub. L. 94–455, §1021(a), added subpars. (F) and (G) and redesignated former subpar. (F) as (H).

Subsec. (c). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, §407(c), Oct. 22, 2004, 118 Stat. 1499, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

Pub. L. 108–357, title VIII, §837(b), Oct. 22, 2004, 118 Stat. 1596, provided that: ''The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1173(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1997, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.''

Amendment by section 1601(e) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 36C of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of controlled foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end, see section 13232(d) of Pub. L. 103–66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 123(b) of Pub. L. 98–369 applicable to accounts receivable and evidences of indebtedness transferred after Mar. 1, 1984, in taxable years ending after such date, with an exception, see section 123(c) of Pub. L. 98–369, set out as a note under section 864 of this title.

Amendment by section 801(d)(8) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1021(c) of Pub. L. 94–455, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section and section 958 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end. In determining for purposes of any taxable year referred to in the preceding sentence the amount referred to in section 956(a)(2)(A) of the Internal Revenue Code of 1986 for the last taxable year of a corporation beginning before January 1, 1976, the amendments made by this section shall be deemed also to apply to such last taxable year.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§956A. Repealed. Pub. L. 104–188, title I, §1501(a)(2), Aug. 20, 1996, 110 Stat. 1825]

Section, added Pub. L. 103–66, title XIII, §13231(b), Aug. 10, 1993, 107 Stat. 496; amended Pub. L. 104–188, title I, §1703(i)(2), (3), Aug. 20, 1996, 110 Stat. 1876, related to earnings invested in excess passive assets.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as an Effective Date of 1996 Amendment note under section 904 of this title.

§957. Controlled foreign corporations; United States persons

(a) General rule

For purposes of this subpart, the term ''controlled foreign corporation'' means any foreign corporation if more than 50 percent of—

(1) the total combined voting power of all classes of stock of such corporation entitled to vote, or

(2) the total value of the stock of such corporation,

is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such foreign corporation.

(b) Special rule for insurance

For purposes only of taking into account income described in section 953(a) (relating to in-

surance income), the term ''controlled foreign corporation'' includes not only a foreign corporation as defined by subsection (a) but also one of which more than 25 percent of the total combined voting power of all classes of stock (or more than 25 percent of the total value of stock) is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such corporation, if the gross amount of premiums or other consideration in respect of the reinsurance or the issuing of insurance or annuity contracts described in section 953(a)(1)[1] exceeds 75 percent of the gross amount of all premiums or other consideration in respect of all risks.

(c) United States person

For purposes of this subpart, the term ''United States person'' has the meaning assigned to it by section 7701(a)(30) except that—

(1) with respect to a corporation organized under the laws of the Commonwealth of Puerto Rico, such term does not include an individual who is a bona fide resident of Puerto Rico, if a dividend received by such individual during the taxable year from such corporation would, for purposes of section 933(1), be treated as income derived from sources within Puerto Rico, and

(2) with respect to a corporation organized under the laws of Guam, American Samoa, or the Northern Mariana Islands—

(A) 80 percent or more of the gross income of which for the 3-year period ending at the close of the taxable year (or for such part of such period as such corporation or any predecessor has been in existence) was derived from sources within such a possession or was effectively connected with the conduct of a trade or business in such a possession, and

(B) 50 percent or more of the gross income of which for such period (or part) was derived from the active conduct of a trade or business within such a possession,

such term does not include an individual who is a bona fide resident of Guam, American Samoa, or the Northern Mariana Islands.

For purposes of subparagraphs (A) and (B) of paragraph (2), the determination as to whether income was derived from the active conduct of a trade or business within a possession shall be made under regulations prescribed by the Secretary.

(Added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1017; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99–514, title XII, §§ 1221(b)(3)(C), 1222(a), 1224(a), 1273(a), Oct. 22, 1986, 100 Stat. 2553, 2556, 2558, 2595; Pub. L. 108–357, title VIII, § 908(c)(5), Oct. 22, 2004, 118 Stat. 1656.)

REFERENCES IN TEXT

Section 953(a)(1), referred to in subsec. (b), was subsequently amended, and section 953(a)(1) no longer describes insurance or annuity contracts. However, insurance or annuity contracts are described elsewhere in that section.

[1] See References in Text note below.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–357, § 908(c)(5)(B), struck out ''derived from sources within a possession, was effectively connected with the conduct of a trade or business within a possession, or'' after ''whether income was'' in concluding provisions.

Subsec. (c)(2)(B). Pub. L. 108–357, § 908(c)(5)(A), substituted ''active conduct of a'' for ''conduct of an active''.

1986—Subsec. (a). Pub. L. 99–514, § 1222(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''For purposes of this subpart, the term 'controlled foreign corporation' means any foreign corporation of which more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such foreign corporation.''

Subsec. (b). Pub. L. 99–514, § 1222(a)(2), inserted ''(or more than 25 percent of the total value of stock)''.

Pub. L. 99–514, § 1221(b)(3)(C), substituted ''insurance income'' for ''income derived from insurance of United States risks''.

Subsec. (c). Pub. L. 99–514, § 1273(a), added par. (2) and concluding provisions and struck out former pars. (2) and (3) which read as follows:

''(2) with respect to a corporation organized under the laws of the Virgin Islands, such term does not include an individual who is a bona fide resident of the Virgin Islands and whose income tax obligation under this subtitle for the taxable year is satisfied pursuant to section 28(a) of the Revised Organic Act of the Virgin Islands, approved July 22, 1954 (48 U.S.C. 1642), by paying tax on income derived from all sources both within and outside the Virgin Islands into the treasury of the Virgin Islands, and

''(3) with respect to a corporation organized under the laws of any other possession of the United States, such term does not include an individual who is a bona fide resident of any such other possession and whose income derived from sources within possessions of the United States is not, by reason of section 931(a), includible in gross income under this subtitle for the taxable year.''

Pub. L. 99–514, § 1224(a), redesignated subsec. (d) as (c) and struck out former subsec. (c) which provided circumstances under which for purposes of this subpart, the term ''controlled foreign corporation'' would not include certain corporations created or organized in Puerto Rico or a possession of the United States or under the laws of Puerto Rico or a possession of the United States.

Subsec. (d). Pub. L. 99–514, § 1224(a), redesignated subsec. (d) as (c).

1976—Subsec. (c) Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years ending after Oct. 22, 2004, see section 908(d)(1) of Pub. L. 108–357, set out as an Effective Date note under section 937 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1221(b)(3)(C) of Pub. L. 99–514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99–514, set out as a note under section 954 of this title.

Pub. L. 99–514, title XII, § 1222(c), Oct. 22, 1986, 100 Stat. 2557, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 552 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1986; except that for purposes of applying sections 951(a)(1)(B) and 956 of the Internal Revenue Code of 1986, such amendments shall take effect on August 16, 1986.

''(2) TRANSITIONAL RULE.—In the case of any corporation treated as a controlled foreign corporation by reason of the amendments made by this section, property acquired before August 16, 1986, shall not be taken into account under section 956(b) of the Internal Revenue Code of 1986.

''(3) SPECIAL RULE FOR BENEFICIARY OF TRUST.—In the case of an individual—

''(A) who is a beneficiary of a trust which was established on December 7, 1979, under the laws of a foreign jurisdiction, and

''(B) who was not a citizen or resident of the United States on the date the trust was established,

amounts which are included in the gross income of such beneficiary under section 951(a) of the Internal Revenue Code of 1986 with respect to stock held by the trust (and treated as distributed to the trust) shall be treated as the first amounts which are distributed by the trust to such beneficiary and as amounts to which section 959(a) of such Code applies.''

Section 1224(b) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1986; except that for purposes of applying sections 951(a)(1)(B) and 956 of the Internal Revenue Code of 1986, such amendments shall take effect on August 16, 1986.

''(2) TRANSITIONAL RULE.—In the case of any corporation treated as a controlled foreign corporation by reason of the amendment made by subsection (a), property acquired before August 16, 1986, shall not be taken into account under section 956(b) of the Internal Revenue Code of 1986.''

Amendment by section 1273(a) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99–514, set out as a note under section 931 of this title.

§958. Rules for determining stock ownership

(a) Direct and indirect ownership

(1) General rule

For purposes of this subpart (other than section 960(a)(1)), stock owned means—

(A) stock owned directly, and

(B) stock owned with the application of paragraph (2).

(2) Stock ownership through foreign entities

For purposes of subparagraph (B) of paragraph (1), stock owned, directly or indirectly, by or for a foreign corporation, foreign partnership, or foreign trust or foreign estate (within the meaning of section 7701(a)(31)) shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(3) Special rule for mutual insurance companies

For purposes of applying paragraph (1) in the case of a foreign mutual insurance company, the term ''stock'' shall include any certificate entitling the holder to voting power in the corporation.

(b) Constructive ownership

For purposes of sections 951(b), 954(d)(3), 956(c)(2), and 957, section 318(a) (relating to constructive ownership of stock) shall apply to the extent that the effect is to treat any United States person as a United States shareholder within the meaning of section 951(b), to treat a person as a related person within the meaning of section 954(d)(3), to treat the stock of a domestic corporation as owned by a United States shareholder of the controlled foreign corporation for purposes of section 956(c)(2), or to treat a foreign corporation as a controlled foreign corporation under section 957, except that—

(1) In applying paragraph (1)(A) of section 318(a), stock owned by a nonresident alien individual (other than a foreign trust or foreign estate) shall not be considered as owned by a citizen or by a resident alien individual.

(2) In applying subparagraphs (A), (B), and (C) of section 318(a)(2), if a partnership, estate, trust, or corporation owns, directly or indirectly, more than 50 percent of the total combined voting power of all classes of stock entitled to vote of a corporation, it shall be considered as owning all the stock entitled to vote.

(3) In applying subparagraph (C) of section 318(a)(2), the phrase ''10 percent'' shall be substituted for the phrase ''50 percent'' used in subparagraph (C).

(4) Subparagraph (A), (B), and (C) of section 318(a)(3) shall not be applied so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

Paragraphs (1) and (4) shall not apply for purposes of section 956(c)(2) to treat stock of a domestic corporation as not owned by a United States shareholder.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1018; amended Pub. L. 88–554, §4(b)(5), Aug. 31, 1964, 78 Stat. 763; Pub. L. 94–455, title X, §1021(b), Oct. 4, 1976, 90 Stat. 1619; Pub. L. 104–188, title I, §§1703(i)(4), 1704(t)(7), Aug. 20, 1996, 110 Stat. 1876, 1887.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104–188, §1704(t)(7), substituted ''section 960(a)(1)'' for ''sections 955(b)(1)(A) and (B), 955(c)(2)(A)(ii), and 960(a)(1)'' in introductory provisions.

Subsec. (b). Pub. L. 104–188, §1703(i)(4), substituted ''956(c)(2)'' for ''956(b)(2)'' wherever appearing in introductory and closing provisions.

1976—Subsec. (b). Pub. L. 94–455 inserted ''956(b)(2)'' after ''purposes of sections 951(b), 954(d)(3),'', ''to treat the stock of a domestic corporation as owned by a United States shareholder of the controlled foreign corporation for purposes of section 956(b)(2)'' after ''meaning of section 954(d)(3)'' and ''Paragraphs (1) and (4) shall not apply for purposes of section 956(b)(2) to treat stock of a domestic corporation as not owned by a United States shareholder'' following subpar. (4).

1964—Subsec. (b). Pub. L. 88–554 redesignated pars. (4) and (5) as (3) and (4), respectively, struck out former par. (3) which related to ownership of stock by a partnership, estate, trust, or corporation for purposes of applying first sentence of subpars. (A) and (B), and subpar. (C)(i) of section 318(a)(2) of this title, and made amendments throughout subsec. (b) to conform to changes made in section 318 of this title by Pub. L. 88–554.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1703(i)(4) of Pub. L. 104–188 effective as if included in the provision of the Revenue

Reconciliation Act of 1993, Pub. L. 103–66, §§ 13001–13444, to which such amendment relates, see section 1703(*o*) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders within which or with which such taxable years of such corporations end, see section 1021(c) of Pub. L. 94–455, set out as a note under section 956 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88–554, set out as a note under section 318 of this title.

§ 959. Exclusion from gross income of previously taxed earnings and profits

(a) Exclusion from gross income of United States persons

For purposes of this chapter, the earnings and profits of a foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a) shall not, when—

(1) such amounts are distributed to, or

(2) such amounts would, but for this subsection, be included under section 951(a)(1)(B) in the gross income of,

such shareholder (or any other United States person who acquires from any person any portion of the interest of such United States shareholder in such foreign corporation, but only to the extent of such portion, and subject to such proof of the identity of such interest as the Secretary may by regulations prescribe) directly or indirectly through a chain of ownership described under section 958(a), be again included in the gross income of such United States shareholder (or of such other United States person). The rules of subsection (c) shall apply for purposes of paragraph (1) of this subsection and the rules of subsection (f) shall apply for purposes of paragraph (2) of this subsection.

(b) Exclusion from gross income of certain foreign subsidiaries

For purposes of section 951(a), the earnings and profits of a controlled foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a), shall not, when distributed through a chain of ownership described under section 958(a), be also included in the gross income of another controlled foreign corporation in such chain for purposes of the application of section 951(a) to such other controlled foreign corporation with respect to such United States shareholder (or to any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder in the controlled foreign corporation, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations).

(c) Allocation of distributions

For purposes of subsections (a) and (b), section 316(a) shall be applied by applying paragraph (2) thereof, and then paragraph (1) thereof—

(1) first to the aggregate of—

(A) earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section), and

(B) earnings and profits attributable to amounts included in gross income under section 951(a)(1)(C) (or which would have been included except for subsection (a)(3) of this section),

with any distribution being allocated between earnings and profits described in subparagraph (A) and earnings and profits described in subparagraph (B) proportionately on the basis of the respective amounts of such earnings and profits,

(2) then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under subparagraph (B) or (C) of section 951(a)(1) because of the exclusions in paragraphs (2) and (3) of subsection (a) of this section), and

(3) then to other earnings and profits.

References in this subsection to section 951(a)(1)(C) and subsection (a)(3) shall be treated as references to such provisions as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996.

(d) Distributions excluded from gross income not to be treated as dividends

Except as provided in section 960(a)(3), any distribution excluded from gross income under subsection (a) shall be treated, for purposes of this chapter, as a distribution which is not a dividend; except that such distributions shall immediately reduce earnings and profits.

(e) Coordination with amounts previously taxed under section 1248

For purposes of this section and section 960(b), any amount included in the gross income of any person as a dividend by reason of subsection (a) or (f) of section 1248 shall be treated as an amount included in the gross income of such person (or, in any case to which section 1248(e) applies, of the domestic corporation referred to in section 1248(e)(2)) under section 951(a)(1)(A).

(f) Allocation rules for certain inclusions

(1) In general

For purposes of this section, amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3).

(2) Treatment of distributions

In applying this section, actual distributions shall be taken into account before amounts that would be included under section 951(a)(1)(B) (determined without regard to this section).

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1019; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–369, div. A, title I, §133(b)(1), July 18, 1984, 98 Stat. 668; Pub. L. 99–514, title XII, §1226(b), Oct. 22, 1986, 100 Stat. 2560; Pub. L. 100–647, title I, §1012(bb)(7)(A), Nov. 10, 1988, 102 Stat. 3536; Pub. L. 103–66, title XIII, §13231(c)(1), (2), (4)(A), (B), Aug. 10, 1993, 107 Stat. 497, 498; Pub. L. 104–188, title I, §1501(b)(4)–(8), Aug. 20, 1996, 110 Stat. 1826.)

REFERENCES IN TEXT

The date of the enactment of the Small Business Job Protection Act of 1996, referred to in subsec. (c), is the date of enactment of Pub. L. 104–188, which was approved Aug. 20, 1996.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–188, §1501(b)(4), (5), substituted ''paragraph (2)'' for ''paragraphs (2) and (3)'' in closing provisions, inserted ''or'' at end of par. (1), struck out ''or'' at end of par. (2), and struck out par. (3) which read as follows: ''such amounts would, but for this subsection, be included under section 951(a)(1)(C) in the gross income of,''.

Subsec. (c). Pub. L. 104–188, §1501(b)(6), inserted at end ''References in this subsection to section 951(a)(1)(C) and subsection (a)(3) shall be treated as references to such provisions as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996.''

Subsec. (f)(1). Pub. L. 104–188, §1501(b)(7), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''For purposes of this section—

''(A) amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3), and

''(B) amounts that would be included under subparagraph (C) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2) to the extent the earnings so described were accumulated in taxable years beginning after September 30, 1993, and then to earnings described in subsection (c)(3).''

Subsec. (f)(2). Pub. L. 104–188, §1501(b)(8), substituted ''section 951(a)(1)(B)'' for ''subparagraphs (B) and (C) of section 951(a)(1)''.

1993—Subsec. (a). Pub. L. 103–66, §13231(c)(2)(A), (4)(A), substituted in introductory provisions ''earnings and profits'' for ''earnings and profits for taxable year'' and inserted at end of closing provisions ''The rules of subsection (c) shall apply for purposes of paragraph (1) of this subsection and the rules of subsection (f) shall apply for purposes of paragraphs (2) and (3) of this subsection.''

Subsec. (a)(3). Pub. L. 103–66, §13231(c)(1), added par. (3).

Subsec. (b). Pub. L. 103–66, §13231(c)(4)(A), substituted ''earnings and profits'' for ''earnings and profits for a taxable year''.

Subsec. (c)(1). Pub. L. 103–66, §13231(c)(2)(C), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''first to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section),''.

Subsec. (c)(2). Pub. L. 103–66, §13231(c)(4)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under section 951(a)(1)(B) because of the exclusion in subsection (a)(2) of this section), and''.

Subsec. (f). Pub. L. 103–66, §13231(c)(2)(B), added subsec. (f).

1988—Subsec. (e). Pub. L. 100–647 substituted ''such person (or, in any case to which section 1248(e) applies, of the domestic corporation referred to in section 1248(e)(2)) under'' for ''such person under''.

1986—Subsec. (d). Pub. L. 99–514 inserted ''; except that such distributions shall immediately reduce earnings and profits''.

1984—Subsec. (e). Pub. L. 98–369 added subsec. (e).

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103–66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(bb)(7)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply in the case of transactions to which section 1248(e) of the 1986 Code applies and which occur after December 31, 1986.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1226(c)(2) of Pub. L. 99–514 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 133(d)(2), (3) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XVIII, §1810(i)(2), Oct. 22, 1986, 100 Stat. 2095, 2829; Pub. L. 100–647, title I, §1018(g)(2), Nov. 10, 1988, 102 Stat. 3582, provided that:

''(2) SUBSECTIONS (b) AND (c).—Except as provided in paragraph (3), the amendments made by subsections (b) and (c) [amending this section and section 1248 of this title] shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies occurring after the date of the enactment of this Act [July 18, 1984].

''(3) ELECTION OF EARLIER DATE FOR CERTAIN TRANSACTIONS.—

''(A) IN GENERAL.—If the appropriate election is made under subparagraph (B), the amendments made by subsection (b) [amending this section and section 1248 of this title] shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of such Code applies occurring after October 9, 1975.

''(B) ELECTION.—

''(i) Subparagraph (A) shall apply with respect to transactions to which subsection (a) of section 1248 of such Code applies if the foreign corporation described in such subsection (or its successor in interest) so elects.

''(ii) Subparagraph (A) shall apply with respect to transactions to which subsection (f) of section 1248 of such Code applies if the domestic corporation described in section 1248(f)(1) of such Code (or its successor) so elects.

''(iii) Any election under clause (i) or (ii) shall be made not later than the date which is 1 year after the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986] and shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe.''

§ 960. Special rules for foreign tax credit

(a) Taxes paid by a foreign corporation

(1) Deemed paid credit

For purposes of subpart A of this part, if there is included under section 951(a) in the gross income of a domestic corporation any amount attributable to earnings and profits of a foreign corporation which is a member of a qualified group (as defined in section 902(b)) with respect to the domestic corporation, then, except to the extent provided in regulations, section 902 shall be applied as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B)).

(2) Taxes previously deemed paid by domestic corporation

If a domestic corporation receives a distribution from a foreign corporation, any portion of which is excluded from gross income under section 959, the income, war profits, and excess profits taxes paid or deemed paid by such foreign corporation to any foreign country or to any possession of the United States in connection with the earnings and profits of such foreign corporation from which such distribution is made shall not be taken into account for purposes of section 902, to the extent such taxes were deemed paid by a domestic corporation under paragraph (1) for any prior taxable year.

(3) Taxes paid by foreign corporation and not previously deemed paid by domestic corporation

Any portion of a distribution from a foreign corporation received by a domestic corporation which is excluded from gross income under section 959(a) shall be treated by the domestic corporation as a dividend, solely for purposes of taking into account under section 902 any income, war profits, or excess profits taxes paid to any foreign country or to any possession of the United States, on or with respect to the accumulated profits of such foreign corporation from which such distribution is made, which were not deemed paid by the domestic corporation under paragraph (1) for any prior taxable year.

(b) Special rules for foreign tax credit in year of receipt of previously taxed earnings and profits

(1) Increase in section 904 limitation

In the case of any taxpayer who—

(A) either (i) chose to have the benefits of subpart A of this part for a taxable year beginning after September 30, 1993, in which he was required under section 951(a) to include any amount in his gross income, or (ii) did not pay or accrue for such taxable year any income, war profits, or excess profits taxes to any foreign country or to any possession of the United States,

(B) chooses to have the benefits of subpart A of this part for any taxable year in which he receives 1 or more distributions or amounts which are excludable from gross income under section 959(a) and which are attributable to amounts included in his gross income for taxable years referred to in subparagraph (A), and

(C) for the taxable year in which such distributions or amounts are received, pays, or is deemed to have paid, or accrues income, war profits, or excess profits taxes to a foreign country or to any possession of the United States with respect to such distributions or amounts,

the limitation under section 904 for the taxable year in which such distributions or amounts are received shall be increased by the lesser of the amount of such taxes paid, or deemed paid, or accrued with respect to such distributions or amounts or the amount in the excess limitation account as of the beginning of such taxable year.

(2) Excess limitation account

(A) Establishment of account

Each taxpayer meeting the requirements of paragraph (1)(A) shall establish an excess limitation account. The opening balance of such account shall be zero.

(B) Increases in account

For each taxable year beginning after September 30, 1993, the taxpayer shall increase the amount in the excess limitation account by the excess (if any) of—

(i) the amount by which the limitation under section 904(a) for such taxable year was increased by reason of the total amount of the inclusions in gross income under section 951(a) for such taxable year, over

(ii) the amount of any income, war profits, and excess profits taxes paid, or deemed paid, or accrued to any foreign country or possession of the United States which were allowable as a credit under section 901 for such taxable year and which would not have been allowable but for the inclusions in gross income described in clause (i).

Proper reductions in the amount added to the account under the preceding sentence for any taxable year shall be made for any increase in the credit allowable under section 901 for such taxable year by reason of a carryback if such increase would not have been allowable but for the inclusions in gross income described in clause (i).

(C) Decreases in account

For each taxable year beginning after September 30, 1993, for which the limitation under section 904 was increased under paragraph (1), the taxpayer shall reduce the amount in the excess limitation account by the amount of such increase.

(3) Distributions of income previously taxed in years beginning before October 1, 1993

If the taxpayer receives a distribution or amount in a taxable year beginning after September 30, 1993, which is excluded from gross income under section 959(a) and is attributable to any amount included in gross income under

section 951(a) for a taxable year beginning before October 1, 1993, the limitation under section 904 for the taxable year in which such amount or distribution is received shall be increased by the amount determined under this subsection as in effect on the day before the date of the enactment of the Revenue Reconcilation[1] Act of 1993.

(4) Cases in which taxes not to be allowed as deduction

In the case of any taxpayer who—

(A) chose to have the benefits of subpart A of this part for a taxable year in which he was required under section 951(a) to include in his gross income an amount in respect of a controlled foreign corporation, and

(B) does not choose to have the benefits of subpart A of this part for the taxable year in which he receives a distribution or amount which is excluded from gross income under section 959(a) and which is attributable to earnings and profits of the controlled foreign corporation which was included in his gross income for the taxable year referred to in subparagraph (A),

no deduction shall be allowed under section 164 for the taxable year in which such distribution or amount is received for any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States on or with respect to such distribution or amount.

(5) Insufficient taxable income

If an increase in the limitation under this subsection exceeds the tax imposed by this chapter for such year, the amount of such excess shall be deemed an overpayment of tax for such year.

(c) Limitation with respect to section 956 inclusions

(1) In general

If there is included under section 951(a)(1)(B) in the gross income of a domestic corporation any amount attributable to the earnings and profits of a foreign corporation which is a member of a qualified group (as defined in section 902(b)) with respect to the domestic corporation, the amount of any foreign income taxes deemed to have been paid during the taxable year by such domestic corporation under section 902 by reason of subsection (a) with respect to such inclusion in gross income shall not exceed the amount of the foreign income taxes which would have been deemed to have been paid during the taxable year by such domestic corporation if cash in an amount equal to the amount of such inclusion in gross income were distributed as a series of distributions (determined without regard to any foreign taxes which would be imposed on an actual distribution) through the chain of ownership which begins with such foreign corporation and ends with such domestic corporation.

(2) Authority to prevent abuse

The Secretary shall issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this subsection, including regulations or other guidance which prevent the inappropriate use of the foreign corporation's foreign income taxes not deemed paid by reason of paragraph (1).

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1020; amended Pub. L. 94–455, title X, §§1031(b)(1), 1033(b)(2), 1037(a), Oct. 4, 1976, 90 Stat. 1622, 1628, 1633; Pub. L. 99–514, title XII, §1202(b), Oct. 22, 1986, 100 Stat. 2530; Pub. L. 103–66, title XIII, §13233(b)(1), Aug. 10, 1993, 107 Stat. 502; Pub. L. 105–34, title XI, §1113(b), Aug. 5, 1997, 111 Stat. 971; Pub. L. 111–226, title II, §214(a), Aug. 10, 2010, 124 Stat. 2399.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1993, referred to in subsec. (b)(3), is the date of enactment of Pub. L. 103–66, which was approved Aug. 10, 1993.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–226 added subsec. (c).

1997—Subsec. (a)(1). Pub. L. 105–34 amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''For purposes of subpart A of this part, if there is included, under section 951(a), in the gross income of a domestic corporation any amount attributable to earnings and profits—

''(A) of a foreign corporation (hereafter in this subsection referred to as the 'first foreign corporation') at least 10 percent of the voting stock of which is owned by such domestic corporation, or

''(B) of a second foreign corporation (hereinafter in this subsection referred to as the 'second foreign corporation') at least 10 percent of the voting stock of which is owned by the first foreign corporation, or

''(C) of a third foreign corporation (hereinafter in this subsection referred to as the 'third foreign corporation') at least 10 percent of the voting stock of which is owned by the second foreign corporation,

then, except to the extent provided in regulations, such domestic corporation shall be deemed to have paid a portion of such foreign corporation's post-1986 foreign income taxes determined under section 902 in the same manner as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B)). This paragraph shall not apply with respect to any amount included in the gross income of such domestic corporation attributable to earnings and profits of the second foreign corporation or of the third foreign corporation unless, in the case of the second foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(A) is satisfied, and in the case of the third foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(B) is satisfied.''

1993—Subsec. (b). Pub. L. 103–66 added pars. (1) to (3), redesignated former pars. (3) and (4) as (4) and (5), respectively, and struck out former par. (1) relating to increase in section 904 limitation and former par. (2) relating to the amount of increase.

1986—Subsec. (a)(1). Pub. L. 99–514 substituted ''then, except to the extent provided in regulations, such domestic corporation shall be deemed to have paid a portion of such foreign corporation's post-1986 foreign income taxes determined under section 902 in the same manner as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B))'' for ''then, under regulations prescribed by the Secretary, such domestic corporation shall be deemed to have paid the same proportion of the total income, war profits, and excess profits taxes paid (or deemed paid) by such foreign corporation to a foreign country or possession of the United States for the tax-

[1] So in original. Probably should be ''Reconciliation''.

able year on or with respect to the earnings and profits of such foreign corporation which the amount of earnings and profits of such foreign corporation so included in gross income of the domestic corporation bears to the entire amount of the earnings and profits of such corporation for such taxable year''.

1976—Subsec. (a)(1). Pub. L. 94–455, §§1033(b)(2), 1037(a), substituted ''bears to the entire amount of the earnings and profits of such foreign corporation for such taxable year'' for ''bears to–'' after ''gross income of the domestic corporation'', struck out subpars. (C) and (D) relating to corporations which are and are not less developed country corporations, inserted in subpar. (A) ''(hereafter in this subsection referred to as the 'first foreign corporation')'' after ''foreign corporation'', substituted in subpar. (B) ''of a second foreign corporation (hereinafter in this subsection referred to as the 'second foreign corporation') at least 10 percent of the voting stock of which is owned by the first foreign corporation, or'' for ''of a foreign corporation at least 50 percent of the voting stock of which is owned by a foreign corporation at least 10 percent of the voting stock of which in turn owned by such domestic corporation'' after ''(B)'', added subpar. (C), and inserted at end ''This paragraph shall not apply with respect to any amount included in the gross income of such domestic corporation attributable to earning and profits of the second foreign corporation or of the third foreign corporation unless, in the case of the second foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(A) is satisfied, and in the case of the third foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(B) is satisfied.''

Subsec. (b). Pub. L. 94–455, §1031(b)(1), struck out ''applicable'' in par. (1) after ''amount, the'', in par. (2) after ''increase of the'', and in subpar. (A) of par. (2) after ''by which the''.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–226, title II, §214(b), Aug. 10, 2010, 124 Stat. 2399, provided that: ''The amendment made by this section [amending this section] shall apply to acquisitions of United States property (as defined in section 956(c) of the Internal Revenue Code of 1986) after December 31, 2010.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable, with special rule, to taxes of foreign corporations for taxable years of such corporations beginning after Aug. 5, 1997, see section 1113(c) of Pub. L. 105–34, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13233(b)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after September 30, 1993.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to distributions by foreign corporations out of, and to inclusions under section 951(a) of this title attributable to, earnings and profits for taxable years beginning after Dec. 31, 1986, see section 1202(e) of Pub. L. 99–514, set out as a note under section 902 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(1) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Amendment by section 1033(b)(2) of Pub. L. 94–455 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1977, and in respect of any distribution received by a domestic corporation before Jan. 1, 1978, in a taxable year of such corporation beginning after Dec. 31, 1975, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year beginning after Dec. 31, 1975, see section 1033(c) of Pub. L. 94–455, set out as a note under section 902 of this title.

Section 1037(b) of Pub. L. 94–455, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by this section [amending this section] shall apply with respect to earnings and profits of a foreign corporation, included, under section 951(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the gross income of a domestic corporation in taxable years beginning after December 31, 1976.''

§ 961. Adjustments to basis of stock in controlled foreign corporations and of other property

(a) Increase in basis

Under regulations prescribed by the Secretary, the basis of a United States shareholder's stock in a controlled foreign corporation, and the basis of property of a United States shareholder by reason of which he is considered under section 958(a)(2) as owning stock of a controlled foreign corporation, shall be increased by the amount required to be included in his gross income under section 951(a) with respect to such stock or with respect to such property, as the case may be, but only to the extent to which such amount was included in the gross income of such United States shareholder. In the case of a United States shareholder who has made an election under section 962 for the taxable year, the increase in basis provided by this subsection shall not exceed an amount equal to the amount of tax paid under this chapter with respect to the amounts required to be included in his gross income under section 951(a).

(b) Reduction in basis

(1) In general

Under regulations prescribed by the Secretary, the adjusted basis of stock or other property with respect to which a United States shareholder or a United States person receives an amount which is excluded from gross income under section 959(a) shall be reduced by the amount so excluded. In the case of a United States shareholder who has made an election under section 962 for any prior taxable year, the reduction in basis provided by this paragraph shall not exceed an amount equal to the amount received which is excluded from gross income under section 959(a) after the application of section 962(d).

(2) Amount in excess of basis

To the extent that an amount excluded from gross income under section 959(a) exceeds the adjusted basis of the stock or other property with respect to which it is received, the amount shall be treated as gain from the sale or exchange of property.

(c) Basis adjustments in stock held by foreign corporations

Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning stock in a controlled foreign corporation which is owned by another controlled foreign corporation, then adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to—

(1) the basis of such stock, and

(2) the basis of stock in any other controlled foreign corporation by reason of which the United States shareholder is considered under section 958(a)(2) as owning the stock described in paragraph (1),

but only for the purposes of determining the amount included under section 951 in the gross income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations). The preceding sentence shall not apply with respect to any stock to which a basis adjustment applies under subsection (a) or (b).

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1022; amended Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105–34, title XI, §1112(b)(1), Aug. 5, 1997, 111 Stat. 969; Pub. L. 109–135, title IV, §409(b), Dec. 21, 2005, 119 Stat. 2635.)

AMENDMENTS

2005—Subsec. (c). Pub. L. 109–135 amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning any stock in a controlled foreign corporation which is actually owned by another controlled foreign corporation, adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to the basis of such stock in the hands of such other controlled foreign corporation, but only for the purposes of determining the amount included under section 951 in the gross income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations).''

1997—Subsec. (c). Pub. L. 105–34 added subsec. (c).

1976—Subsecs. (a), (b)(1). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title IV, §409(d), Dec. 21, 2005, 119 Stat. 2636, provided that: ''The amendments made by this section [amending this section and sections 6038B, 6411, and 6601 of this title] shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997 [Pub. L. 105–34] to which they relate.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1112(b)(2) of Pub. L. 105–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply for purposes of determining inclusions for taxable years of United States shareholders beginning after December 31, 1997.''

DUAL RESIDENT COMPANIES

Basis adjustments of this section not applicable in certain circumstances involving dual resident companies, see section 6126 of Pub. L. 100–647, set out as a note under section 1502 of this title.

§962. Election by individuals to be subject to tax at corporate rates

(a) General rule

Under regulations prescribed by the Secretary, in the case of a United States shareholder who is an individual and who elects to have the provisions of this section apply for the taxable year—

(1) the tax imposed under this chapter on amounts which are included in his gross income under section 951(a) shall (in lieu of the tax determined under sections 1 and 55) be an amount equal to the tax which would be imposed under sections 11 and 55 if such amounts were received by a domestic corporation, and

(2) for purposes of applying the provisions of section 960 (relating to foreign tax credit) such amounts shall be treated as if they were received by a domestic corporation.

(b) Election

An election to have the provisions of this section apply for any taxable year shall be made by a United States shareholder at such time and in such manner as the Secretary shall prescribe by regulations. An election made for any taxable year may not be revoked except with the consent of the Secretary.

(c) Pro ration of each section 11 bracket amount

For purposes of applying subsection (a)(1), the amount in each taxable income bracket in the tax table in section 11(b) shall not exceed an amount which bears the same ratio to such bracket amount as the amount included in the gross income of the United States shareholder under section 951(a) for the taxable year bears to such shareholder's pro rata share of the earnings and profits for the taxable year of all controlled foreign corporations with respect to which such shareholder includes any amount in gross income under section 951(a).

(d) Special rule for actual distributions

The earnings and profits of a foreign corporation attributable to amounts which were included in the gross income of a United States shareholder under section 951(a) and with respect to which an election under this section applied shall, when such earnings and profits are distributed, notwithstanding the provisions of section 959(a)(1), be included in gross income to the extent that such earnings and profits so distributed exceed the amount of tax paid under this chapter on the amounts to which such election applied.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1023; amended Pub. L. 94–12, title III, §303(c)(3), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94–164, §4(d)(1), Dec. 23, 1975, 89 Stat. 975; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–600, title III, §301(b)(16), Nov. 6, 1978, 92 Stat. 2822; Pub. L. 100–647, title I, §1007(g)(11), Nov. 10, 1988, 102 Stat. 3435.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–647 substituted ''sections 1 and 55'' and ''sections 11 and 55'' for ''section 1'' and ''section 11'', respectively.

1978—Subsec. (c). Pub. L. 95–600 substituted provisions relating to the pro ration of each section 11 bracket amount for provisions relating to the surtax exemption.

1976—Subsecs. (a), (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

1975—Subsec. (c). Pub. L. 94–164 substituted ''same ratio to the surtax exemption'' for ''same ratio to $25,000'' in subsec. (c) as such subsec. (c) is in effect for taxable years ending after Dec. 31, 1975.

Pub. L. 94–12 substituted ''$50,000'' for ''$25,000''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as a note under section 11 of this title.

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENTS

Amendment by Pub. L. 94–164 applicable to taxable years beginning after Dec. 31, 1975, see section 4(e) of Pub. L. 94–164, set out as a note under section 11 of this title.

Amendment by Pub. L. 94–12 applicable to taxable years ending after Dec. 31, 1974, but to cease to apply for taxable years ending after Dec. 31, 1975, see section 305(b)(1) of Pub. L. 94–12, set out as a note under section 11 of this title.

[§ 963. Repealed. Pub. L. 94–12, title VI, § 602(a)(1), Mar. 29, 1975, 89 Stat. 58]

Section, added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1023; amended Pub. L. 88–272, title I, § 123(b), Feb. 26, 1964, 78 Stat. 29; Pub. L. 90–364, title I, § 102(b), June 28, 1968, 82 Stat. 255; Pub. L. 91–53, § 5(b), Aug. 7, 1969, 83 Stat. 95; Pub. L. 91–172, title VII, § 701(b), Dec. 30, 1969, 83 Stat. 659, dealt with the receipt of minimum distributions by domestic corporations.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years for foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94–12, set out as an Effective Date note under section 955 of this title.

§ 964. Miscellaneous provisions

(a) Earnings and profits

Except as provided in section 312(k)(4), for purposes of this subpart, the earnings and profits of any foreign corporation, and the deficit in earnings and profits of any foreign corporation, for any taxable year shall be determined according to rules substantially similar to those applicable to domestic corporations, under regulations prescribed by the Secretary. In determining such earnings and profits, or the deficit in such earnings and profits, the amount of any illegal bribe, kickback, or other payment (within the meaning of section 162(c)) shall not be taken into account to decrease such earnings and profits or to increase such deficit. The payments referred to in the preceding sentence are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person.

(b) Blocked foreign income

Under regulations prescribed by the Secretary, no part of the earnings and profits of a controlled foreign corporation for any taxable year shall be included in earnings and profits for purposes of sections 952, 955, and 956, if it is established to the satisfaction of the Secretary that such part could not have been distributed by the controlled foreign corporation to United States shareholders who own (within the meaning of section 958(a)) stock of such controlled foreign corporation because of currency or other restrictions or limitations imposed under the laws of any foreign country.

(c) Records and accounts of United States shareholders

(1) Records and accounts to be maintained

The Secretary may by regulations require each person who is, or has been, a United States shareholder of a controlled foreign corporation to maintain such records and accounts as may be prescribed by such regulations as necessary to carry out the provisions of this subpart and subpart G.

(2) Two or more persons required to maintain or furnish the same records and accounts with respect to the same foreign corporation

Where, but for this paragraph, two or more United States persons would be required to maintain or furnish the same records and accounts as may by regulations be required under paragraph (1) with respect to the same controlled foreign corporation for the same period, the Secretary may by regulations provide that the maintenance or furnishing of such records and accounts by only one such person shall satisfy the requirements of paragraph (1) for such other persons.

(d) Treatment of certain branches

(1) In general

For purposes of this chapter, section 6038, section 6046, and such other provisions as may be specified in regulations—

(A) a qualified insurance branch of a controlled foreign corporation shall be treated as a separate foreign corporation created under the laws of the foreign country with respect to which such branch qualifies under paragraph (2), and

(B) except as provided in regulations, any amount directly or indirectly transferred or credited from such branch to one or more other accounts of such controlled foreign corporation shall be treated as a dividend paid to such controlled foreign corporation.

(2) Qualified insurance branch

For purposes of paragraph (1), the term ''qualified insurance branch'' means any branch of a controlled foreign corporation which is licensed and predominantly engaged on a permanent basis in the active conduct of an insurance business in a foreign country if—

(A) separate books and accounts are maintained for such branch,

(B) the principal place of business of such branch is in such foreign country,

(C) such branch would be taxable under subchapter L if it were a separate domestic corporation, and

(D) an election under this paragraph applies to such branch.

An election under this paragraph shall apply to the taxable year for which made and all

subsequent taxable years unless revoked with the consent of the Secretary.

(3) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(e) Gain on certain stock sales by controlled foreign corporations treated as dividends

(1) In general

If a controlled foreign corporation sells or exchanges stock in any other foreign corporation, gain recognized on such sale or exchange shall be included in the gross income of such controlled foreign corporation as a dividend to the same extent that it would have been so included under section 1248(a) if such controlled foreign corporation were a United States person. For purposes of determining the amount which would have been so includible, the determination of whether such other foreign corporation was a controlled foreign corporation shall be made without regard to the preceding sentence.

(2) Same country exception not applicable

Clause (i) of section 954(c)(3)(A) shall not apply to any amount treated as a dividend by reason of paragraph (1).

(3) Clarification of deemed sales

For purposes of this subsection, a controlled foreign corporation shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such controlled foreign corporation is treated as having gain from the sale or exchange of such stock.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1027; amended Pub. L. 91–172, title IV, §442(b)(1), Dec. 30, 1969, 83 Stat. 628; Pub. L. 94–455, title X, §1065(b), title XIX, §§1901(b)(32)(B)(iii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1654, 1800, 1834; Pub. L. 97–34, title II, §206(c), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97–248, title II, §288(b)(2), Sept. 3, 1982, 96 Stat. 571; Pub. L. 100–647, title VI, §6129(a), Nov. 10, 1988, 102 Stat. 3716; Pub. L. 105–34, title XI, §1111(a), Aug. 5, 1997, 111 Stat. 968.)

REFERENCES IN TEXT

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (a), is title I of Pub. L. 95–213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd–1 to 78dd–3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

AMENDMENTS

1997—Subsec. (e). Pub. L. 105–34 added subsec. (e).

1988—Subsec. (d). Pub. L. 100–647 added subsec. (d).

1982—Subsec. (a). Pub. L. 97–248 inserted provision that payments referred to in sentence beginning ''In determining such earnings and profits'' are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person.

1981—Subsec. (a). Pub. L. 97–34 substituted ''section 312(k)(4)'' for ''section 312(k)(3)''.

1976—Subsec. (a). Pub. L. 94–455, §§1065(b), 1901(b)(32)(B)(ii), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'', inserted second sentence, and substituted ''312(k)(3)'' for ''312(m)(3)'' after ''provided in section''.

Subsecs. (b), (c)(1), (2). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

1969—Subsec. (a). Pub. L. 91–172 inserted reference to the exception provided for in section 312(m)(3).

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1111(c)(1) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to gain recognized on transactions occurring after the date of the enactment of this Act [Aug. 5, 1997].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 6129(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1988.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to payments made after Sept. 3, 1982, see section 288(c) of Pub. L. 97–248, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97–34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1065(b) of Pub. L. 94–455 applicable to payments described in section 162(c) of this title made more than 30 days after Oct. 4, 1976, see section 1066(b) of Pub. L. 94–455, set out as a note under section 952 of this title.

§965. Temporary dividends received deduction

(a) Deduction

(1) In general

In the case of a corporation which is a United States shareholder and for which the election under this section is in effect for the taxable year, there shall be allowed as a deduction an amount equal to 85 percent of the cash dividends which are received during such taxable year by such shareholder from controlled foreign corporations.

(2) Dividends paid indirectly from controlled foreign corporations

If, within the taxable year for which the election under this section is in effect, a United States shareholder receives a cash distribution from a controlled foreign corporation which is excluded from gross income under section 959(a), such distribution shall be treated for purposes of this section as a cash dividend to the extent of any amount included in income by such United States shareholder under section 951(a)(1)(A) as a result of any cash dividend during such taxable year to—

(A) such controlled foreign corporation from another controlled foreign corporation that is in a chain of ownership described in section 958(a), or

(B) any other controlled foreign corporation in such chain of ownership from another controlled foreign corporation in such chain of ownership, but only to the extent of cash distributions described in section 959(b)

which are made during such taxable year to the controlled foreign corporation from which such United States shareholder received such distribution.

(b) Limitations

(1) In general

The amount of dividends taken into account under subsection (a) shall not exceed the greater of—

(A) $500,000,000,

(B) the amount shown on the applicable financial statement as earnings permanently reinvested outside the United States, or

(C) in the case of an applicable financial statement which fails to show a specific amount of earnings permanently reinvested outside the United States and which shows a specific amount of tax liability attributable to such earnings, the amount equal to the amount of such liability divided by 0.35.

The amounts described in subparagraphs (B) and (C) shall be treated as being zero if there is no such statement or such statement fails to show a specific amount of such earnings or liability, as the case may be.

(2) Dividends must be extraordinary

The amount of dividends taken into account under subsection (a) shall not exceed the excess (if any) of—

(A) the cash dividends received during the taxable year by such shareholder from controlled foreign corporations, over

(B) the annual average for the base period years of—

(i) the dividends received during each base period year by such shareholder from controlled foreign corporations,

(ii) the amounts includible in such shareholder's gross income for each base period year under section 951(a)(1)(B) with respect to controlled foreign corporations, and

(iii) the amounts that would have been included for each base period year but for section 959(a) with respect to controlled foreign corporations.

The amount taken into account under clause (iii) for any base period year shall not include any amount which is not includible in gross income by reason of an amount described in clause (ii) with respect to a prior taxable year. Amounts described in subparagraph (B) for any base period year shall be such amounts as shown on the most recent return filed for such year; except that amended returns filed after June 30, 2003, shall not be taken into account.

(3) Reduction of benefit if increase in related party indebtedness

The amount of dividends which would (but for this paragraph) be taken into account under subsection (a) shall be reduced by the excess (if any) of—

(A) the amount of indebtedness of the controlled foreign corporation to any related person (as defined in section 954(d)(3)) as of the close of the taxable year for which the election under this section is in effect, over

(B) the amount of indebtedness of the controlled foreign corporation to any related person (as so defined) as of the close of October 3, 2004.

All controlled foreign corporations with respect to which the taxpayer is a United States shareholder shall be treated as 1 controlled foreign corporation for purposes of this paragraph. The Secretary may prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the purposes of this paragraph, including regulations which provide that cash dividends shall not be taken into account under subsection (a) to the extent such dividends are attributable to the direct or indirect transfer (including through the use of intervening entities or capital contributions) of cash or other property from a related person (as so defined) to a controlled foreign corporation.

(4) Requirement to invest in United States

Subsection (a) shall not apply to any dividend received by a United States shareholder unless the amount of the dividend is invested in the United States pursuant to a domestic reinvestment plan which—

(A) is approved by the taxpayer's president, chief executive officer, or comparable official before the payment of such dividend and subsequently approved by the taxpayer's board of directors, management committee, executive committee, or similar body, and

(B) provides for the reinvestment of such dividend in the United States (other than as payment for executive compensation), including as a source for the funding of worker hiring and training, infrastructure, research and development, capital investments, or the financial stabilization of the corporation for the purposes of job retention or creation.

(c) Definitions and special rules

For purposes of this section—

(1) Applicable financial statement

The term ''applicable financial statement'' means—

(A) with respect to a United States shareholder which is required to file a financial statement with the Securities and Exchange Commission (or which is included in such a statement so filed by another person), the most recent audited annual financial statement (including the notes which form an integral part of such statement) of such shareholder (or which includes such shareholder)—

(i) which was so filed on or before June 30, 2003, and

(ii) which was certified on or before June 30, 2003, as being prepared in accordance with generally accepted accounting principles, and

(B) with respect to any other United States shareholder, the most recent audited financial statement (including the notes which form an integral part of such statement) of such shareholder (or which includes such shareholder)—

(i) which was certified on or before June 30, 2003, as being prepared in accordance with generally accepted accounting principles, and

(ii) which is used for the purposes of a statement or report—

(I) to creditors,

(II) to shareholders, or

(III) for any other substantial nontax purpose.

(2) Base period years

(A) In general

The base period years are the 3 taxable years—

(i) which are among the 5 most recent taxable years ending on or before June 30, 2003, and

(ii) which are determined by disregarding—

(I) 1 taxable year for which the sum of the amounts described in clauses (i), (ii), and (iii) of subsection (b)(2)(B) is the largest, and

(II) 1 taxable year for which such sum is the smallest.

(B) Shorter period

If the taxpayer has fewer than 5 taxable years ending on or before June 30, 2003, then in lieu of applying subparagraph (A), the base period years shall include all the taxable years of the taxpayer ending on or before June 30, 2003.

(C) Mergers, acquisitions, etc.

(i) In general

Rules similar to the rules of subparagraphs (A) and (B) of section 41(f)(3) shall apply for purposes of this paragraph.

(ii) Spin-offs, etc.

If there is a distribution to which section 355 (or so much of section 356 as relates to section 355) applies during the 5-year period referred to in subparagraph (A)(i) and the controlled corporation (within the meaning of section 355) is a United States shareholder—

(I) the controlled corporation shall be treated as being in existence during the period that the distributing corporation (within the meaning of section 355) is in existence, and

(II) for purposes of applying subsection (b)(2) to the controlled corporation and the distributing corporation, amounts described in subsection (b)(2)(B) which are received or includible by the distributing corporation or controlled corporation (as the case may be) before the distribution referred to in subclause (I) from a controlled foreign corporation shall be allocated between such corporations in proportion to their respective interests as United States shareholders of such controlled foreign corporation immediately after such distribution.

Subclause (II) shall not apply if neither the controlled corporation nor the distributing corporation is a United States shareholder of such controlled foreign corporation immediately after such distribution.

(3) Dividend

The term ''dividend'' shall not include amounts includible in gross income as a dividend under section 78, 367, or 1248. In the case of a liquidation under section 332 to which section 367(b) applies, the preceding sentence shall not apply to the extent the United States shareholder actually receives cash as part of the liquidation.

(4) Coordination with dividends received deduction

No deduction shall be allowed under section 243 or 245 for any dividend for which a deduction is allowed under this section.

(5) Controlled groups

(A) In general

All United States shareholders which are members of an affiliated group filing a consolidated return under section 1501 shall be treated as one United States shareholder.

(B) Application of $500,000,000 limit

All corporations which are treated as a single employer under section 52(a) shall be limited to one $500,000,000 amount in subsection (b)(1)(A), and such amount shall be divided among such corporations under regulations prescribed by the Secretary.

(C) Permanently reinvested earnings

If a financial statement is an applicable financial statement for more than 1 United States shareholder, the amount applicable under subparagraph (B) or (C) of subsection (b)(1) shall be divided among such shareholders under regulations prescribed by the Secretary.

(d) Denial of foreign tax credit; denial of certain expenses

(1) Foreign tax credit

No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to the deductible portion of—

(A) any dividend, or

(B) any amount described in subsection (a)(2) which is included in income under section 951(a)(1)(A).

No deduction shall be allowed under this chapter for any tax for which credit is not allowable by reason of the preceding sentence.

(2) Expenses

No deduction shall be allowed for expenses directly allocable to the deductible portion described in paragraph (1).

(3) Deductible portion

For purposes of paragraph (1), unless the taxpayer otherwise specifies, the deductible portion of any dividend or other amount is the amount which bears the same ratio to the amount of such dividend or other amount as the amount allowed as a deduction under subsection (a) for the taxable year bears to the amount described in subsection (b)(2)(A) for such year.

(4) Coordination with section 78

Section 78 shall not apply to any tax which is not allowable as a credit under section 901 by reason of this subsection.

(e) Increase in tax on included amounts not reduced by credits, etc.

(1) In general

Any tax under this chapter by reason of nondeductible CFC dividends shall not be treated as tax imposed by this chapter for purposes of determining—

(A) the amount of any credit allowable under this chapter, or

(B) the amount of the tax imposed by section 55.

Subparagraph (A) shall not apply to the credit under section 53 or to the credit under section 27(a) with respect to taxes which are imposed by foreign countries and possessions of the United States and are attributable to such dividends.

(2) Limitation on reduction in taxable income, etc.

(A) In general

The taxable income of any United States shareholder for any taxable year shall in no event be less than the amount of nondeductible CFC dividends received during such year.

(B) Coordination with section 172

The nondeductible CFC dividends for any taxable year shall not be taken into account—

(i) in determining under section 172 the amount of any net operating loss for such taxable year, and

(ii) in determining taxable income for such taxable year for purposes of the 2nd sentence of section 172(b)(2).

(3) Nondeductible CFC dividends

For purposes of this subsection, the term ''nondeductible CFC dividends'' means the excess of the amount of dividends taken into account under subsection (a) over the deduction allowed under subsection (a) for such dividends.

(f) Election

The taxpayer may elect to apply this section to—

(1) the taxpayer's last taxable year which begins before the date of the enactment of this section, or

(2) the taxpayer's first taxable year which begins during the 1-year period beginning on such date.

Such election may be made for a taxable year only if made on or before the due date (including extensions) for filing the return of tax for such taxable year.

(Added Pub. L. 108–357, title IV, § 422(a), Oct. 22, 2004, 118 Stat. 1514; amended Pub. L. 109–135, title IV, § 403(q), Dec. 21, 2005, 119 Stat. 2627.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (f), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

AMENDMENTS

2005—Subsec. (a)(2)(B). Pub. L. 109–135, § 403(q)(1), inserted ''from another controlled foreign corporation in such chain of ownership'' before '', but only to the extent''.

Subsec. (b)(2)(A). Pub. L. 109–135, § 403(q)(2), inserted ''cash'' before ''dividends''.

Subsec. (b)(3). Pub. L. 109–135, § 403(q)(3), inserted at end ''The Secretary may prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the purposes of this paragraph, including regulations which provide that cash dividends shall not be taken into account under subsection (a) to the extent such dividends are attributable to the direct or indirect transfer (including through the use of intervening entities or capital contributions) of cash or other property from a related person (as so defined) to a controlled foreign corporation.''

Subsec. (c)(1). Pub. L. 109–135, § 403(q)(4), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The term 'applicable financial statement' means, with respect to a United States shareholder, the most recently audited financial statement (including notes and other documents which accompany such statement) which includes such shareholder—

''(A) which is certified on or before June 30, 2003, as being prepared in accordance with generally accepted accounting principles, and

''(B) which is used for the purposes of a statement or report—

''(i) to creditors,

''(ii) to shareholders, or

''(iii) for any other substantial nontax purpose.

In the case of a corporation required to file a financial statement with the Securities and Exchange Commission, such term means the most recent such statement filed on or before June 30, 2003.''

Subsec. (d)(2). Pub. L. 109–135, § 403(q)(5), substituted ''directly allocable'' for ''properly allocated and apportioned''.

Subsec. (d)(4). Pub. L. 109–135, § 403(q)(6), added par. (4).

Subsec. (e)(1). Pub. L. 109–135, § 403(q)(7), inserted ''which are imposed by foreign countries and possessions of the United States and are'' after ''taxes'' in concluding provisions.

Subsec. (f). Pub. L. 109–135, § 403(q)(8), inserted ''on or'' before ''before the due date'' in concluding provisions.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109–135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which they relate, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending on or after Oct. 22, 2004, see section 422(d) of Pub. L. 108–357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

SUBPART G—EXPORT TRADE CORPORATIONS

Sec.
970. Reduction of subpart F income of export trade corporations.
971. Definitions.
[972. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, § 1901(b)(27)(B), Oct. 4, 1976, 90 Stat. 1799, struck out item 972 ''Consolidation of group of export trade corporations''.

1962—Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1027, added heading of subpart G, and items 970 to 972.

§970. Reduction of subpart F income of export trade corporations

(a) Export trade income constituting foreign base company income

(1) In general

In the case of a controlled foreign corporation (as defined in section 957) which for the taxable year is an export trade corporation, the subpart F income (determined without regard to this subpart) of such corporation for such year shall be reduced by an amount equal to so much of the export trade income (as defined in section 971(b)) of such corporation for such year as constitutes foreign base company income (as defined in section 954), but only to the extent that such amount does not exceed whichever of the following amounts is the lesser:

(A) an amount equal to 1½ times so much of the export promotion expenses (as defined in section 971(d)) of such corporation for such year as is probably allocable to the export trade income which constitutes foreign base company income of such corporation for such year, or

(B) an amount equal to 10 percent of so much of the gross receipts for such year (or, in the case of gross receipts arising from commissions, fees, or other compensation for its services, so much of the gross amount upon the basis of which such commissions, fees, or other compensation is computed) accruing to such export trade corporation from the sale, installation, operation, maintenance, or use of property in respect of which such corporation derives export trade income as is properly allocable to the export trade income which constitutes foreign base company income of such corporation for such year.

The allocations with respect to export trade income which constitutes foreign base company income under subparagraphs (A) and (B) shall be made under regulations prescribed by the Secretary.

(2) Overall limitation

The reduction under paragraph (1) for any taxable year shall not exceed an amount which bears the same ratio to the increase in the investments in export trade assets (as defined in section 971(c)) of such corporation for such year as the export trade income which constitutes foreign base company income of such corporation for such year bears to the entire export trade income of such corporation for such year.

(b) Inclusion of certain previously excluded amounts

Each United States shareholder of a controlled foreign corporation which for any prior taxable year was an export trade corporation shall include in his gross income under section 951(a)(1)(A)(ii), as an amount to which section 955 (relating to withdrawal of previously excluded subpart F income from qualified investment) applies, his pro rata share of the amount of decrease in the investments in export trade assets of such corporation for such year, but only to the extent that his pro rata share of such amount does not exceed an amount equal to—

(1) his pro rata share of the sum of (A) the amounts by which the subpart F income of such corporation was reduced for all prior taxable years under subsection (a), and (B) the amounts not included in subpart F income (determined without regard to this subpart) for all prior taxable years by reason of the treatment (under section 972 as in effect before the date of the enactment of the Tax Reform Act of 1976) of two or more controlled foreign corporations which are export trade corporations as a single controlled foreign corporation, reduced by

(2) the sum of the amounts which were included in his gross income under section 951(a)(1)(A)(ii) under the provisions of this subsection for all prior taxable years.

(c) Investments in export trade assets

(1) Amount of investments

For purposes of this section, the amount taken into account with respect to any export trade asset shall be its adjusted basis, reduced by any liability to which the asset is subject.

(2) Increase in investments in export trade assets

For purposes of subsection (a), the amount of increase in investments in export trade assets of any controlled foreign corporation for any taxable year is the amount by which—

(A) the amount of such investments at the close of the taxable year, exceeds

(B) the amount of such investments at the close of the preceding taxable year.

(3) Decrease in investments in export trade assets

For purposes of subsection (b), the amount of decrease in investments in export trade assets of any controlled foreign corporation for any taxable year is the amount by which—

(A) the amount of such investments at the close of the preceding taxable year (reduced by an amount equal to the amount of net loss sustained during the taxable year with respect to export trade assets), exceeds

(B) the amount of such investments at the close of the taxable year.

(4) Special rule

A United States shareholder of an export trade corporation may, under regulations prescribed by the Secretary, make the determinations under paragraphs (2) and (3) as of the close of the 75th day after the close of the years referred to in such paragraphs in lieu of on the last day of such years. A United States shareholder of an export trade corporation may, under regulations prescribed by the Secretary, make the determinations under paragraphs (2) and (3) with respect to export trade assets described in section 971(c)(3) as of the close of the years following the years referred to in such paragraphs, or as of the close of such longer period of time as such regulations may permit, in lieu of on the last day of such years and in lieu of on the day prescribed in the preceding sentence. Any election under

this paragraph made with respect to any taxable year shall apply to such year and to all succeeding taxable years unless the Secretary consents to the revocation of such election.

(Added Pub. L. 87–834, §12(a), Oct. 16, 1972, 76 Stat. 1027; amended Pub. L. 94–455, title XIX, §§1901(b)(27)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1799, 1834.)

REFERENCES IN TEXT

The Tax Reform Act of 1976, referred to in subsec. (b)(1), is Pub. L. 94–455, Oct. 4, 1976, 90 Stat. 1250, as amended, which was enacted Oct. 4, 1976. Section 972 of this title was repealed by Pub. L. 94–455, title XIX, §1901(a)(120), Oct. 4, 1976, 90 Stat. 1784. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(1). Pub. L. 94–455, §1901(b)(27)(A), substituted ''treatment (under section 972 as in effect before the date of enactment of the Tax Reform Act of 1976) of two or more controlled foreign corporations which are export trade corporations as a single controlled corporation'' for ''application of section 972'' after ''reason of the''.

Subsec. (c)(4). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in three places.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(27)(A) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EXPORT TRADE CORPORATIONS

Section 505(a), (b) of Pub. L. 92–178, title V, Dec. 10, 1971, 85 Stat. 551, provided as follows:

''(a) USE OF TERMS.—Except as otherwise expressly provided, whenever in this section a reference is made to a section, chapter, or other provision, the reference shall be considered to be made to a section, chapter, or other provision of the Internal Revenue Code of 1954, and terms used in this section shall have the same meaning as when used in such Code.

''(b) TRANSFER TO A DISC OF ASSETS OF EXPORT TRADE CORPORATION.—

''(1) IN GENERAL.—If a corporation (hereinafter in this section called 'parent') owns all of the outstanding stock of an export trade corporation (as defined in section 971), and the export trade corporation, during a taxable year beginning before January 1, 1976, transfers property, without receiving consideration, to a DISC (as defined in section 992(a)) all of whose outstanding stock is owned by the parent, and if the amount transferred by the export trade corporation is not less than the amount of its untaxed subpart F income (as defined in paragraph (2) of this subsection) at the time of such transfer, then—

''(A) notwithstanding section 367 or any other provision of chapter 1, no gain or loss to the export trade corporation, the parent, or the DISC shall be recognized by reason of such transfer;

''(B) the earnings and profits of the DISC shall be increased by the amount transferred to it by the export trade corporation and such amount shall be included in the accumulated DISC income, and for purposes of section 861(a)(2)(D) shall be considered to be qualified export receipts;

''(C) the adjusted basis of the assets transferred to the DISC shall be the same in the hands of the DISC as in the hands of the export trade corporation;

''(D) the earnings and profits of the export trade corporation shall be reduced by the amount transferred to the DISC, to the extent thereof, with the reduction being applied first to the untaxed subpart F income and then to the other earnings and profits in the order in which they were most recently accumulated;

''(E) the basis of the parent's stock in the export trade corporation shall be decreased by the amount obtained by multiplying its basis in such stock by a fraction the numerator of which is the amount transferred to the DISC and the denominator of which is the aggregate adjusted basis of all the assets of the export trade corporation immediately before such transfer;

''(F) the basis of the parent's stock in the DISC shall be increased by the amount of the reduction under subparagraph (E) of its basis in the stock of the export trade corporation;

''(G) the property transferred to the DISC shall not be considered to reduce the investments of the export trade corporation in export trade assets for purposes of applying section 970(b); and

''(H) any foreign income taxes which would have been deemed under section 902 to have been paid by the parent if the transfer had been made to the parent shall be treated as foreign income taxes paid by the DISC.

For purposes of this section, the amount transferred by the export trade corporation to the DISC shall be the aggregate of the adjusted basis of the properties transferred, with proper adjustment for any indebtedness secured by such property or assumed by the DISC in connection with the transfer. For purposes of this section, a foreign corporation which qualified as an export trade corporation for any 3 taxable years beginning before November 1, 1971, shall be treated as an export trade corporation.

''(2) DEFINITION OF UNTAXED SUBPART F INCOME.—For purposes of this section, the term 'untaxed subpart F income' means with respect to an export trade corporation the amount by which—

''(A) the sum of the amount by which the subpart F income of such corporation was reduced for the taxable year and all prior taxable years under section 970(a) and the amounts not included in subpart F income (determined without regard to subpart G of subchapter N of chapter 1) for all prior taxable years by reason of the application of section 972, exceeds

''(B) the sum of the amounts which were included in the gross income of the shareholders of such corporation under section 951(a)(1)(A)(ii) and under the provision of section 970(b) for all prior taxable years,

determined without regard to the transfer of property described in paragraph (1) of this subsection.

''(3) SPECIAL CASES.—If the provisions of paragraph (1) of this subsection are not applicable solely because the export trade corporation or the DISC, or both, are not owned in the manner prescribed in such paragraph, the provisions shall nevertheless be applicable in such cases to the extent, and in accordance with such rules, as may be prescribed by the Secretary or his delegate.

''(4) TREATMENT OF EXPORT TRADE ASSETS.—If the provisions of this subsection are applicable, accounts receivable held by an export trade corporation and transferred to a DISC, to the extent such receivables were export trade assets in the hands of the export trade corporation, shall be treated as qualified export assets for purposes of section 993(b).''

§ 971. Definitions

(a) Export trade corporations

For purposes of this subpart, the term ''export trade corporation'' means—

(1) In general

A controlled foreign corporation (as defined in section 957) which satisfies the following conditions:

(A) 90 percent or more of the gross income of such corporation for the 3–year period immediately preceding the close of the taxable year (or such part of such period subsequent to the effective date of this subpart during which the corporation was in existence) was derived from sources without the United States, and

(B) 75 percent or more of the gross income of such corporation for such period constituted gross income in respect of which such corporation derived export trade income.

(2) Special rule

If 50 percent or more of the gross income of a controlled foreign corporation in the period specified in subsection (a)(1)(A) is gross income in respect of which such corporation derived export trade income in respect of agricultural products grown in the United States, it may qualify as an export trade corporation although it does not meet the requirements of subsection (a)(1)(B).

(3) Limitation

No controlled foreign corporation may qualify as an export trade corporation for any taxable year beginning after October 31, 1971, unless it qualified as an export trade corporation for any taxable year beginning before such date. If a corporation fails to qualify as an export trade corporation for a period of any 3 consecutive taxable years beginning after such date, it may not qualify as an export trade corporation for any taxable year beginning after such period.

(b) Export trade income

For the purposes of this subpart, the term ''export trade income'' means net income from—

(1) the sale to an unrelated person for use, consumption, or disposition outside the United States of export property (as defined in subsection (e)), or from commissions, fees, compensation, or other income from the performance of commercial, industrial, financial, technical, scientific, managerial, engineering, architectural, skilled, or other services in respect to such sales or in respect of the installation or maintenance of such export property;

(2) commissions, fees, compensation, or other income from commercial, industrial, financial, technical, scientific, managerial, engineering, architectural, skilled, or other services performed in connection with the use by an unrelated person outside the United States of patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchises, and other like property acquired or developed and owned by the manufacturer, producer, grower, or extractor of export property in respect of which the export trade corporation earns export trade income under paragraph (1);

(3) commissions, fees, rentals, or other compensation or income attributable to the use of export property by an unrelated person or attributable to the use of export property in the rendition of technical, scientific, or engineering services to an unrelated person; and

(4) interest from export trade assets described in subsection (c)(4).

For purposes of paragraph (3), if a controlled foreign corporation receives income from an unrelated person attributable to the use of export property in the rendition of services to such unrelated person together with income attributable to the rendition of other services to such unrelated person, including personal services, the amount of such aggregate income which shall be considered to be attributable to the use of the export property shall (if such amount cannot be established by reference to transactions between unrelated persons) be that part of such aggregate income which the cost of the export property consumed in the rendition of such services (including a reasonable allowance for depreciation) bears to the total cost and expenses attributable to such aggregate income.

(c) Export trade assets

For purposes of this subpart, the term ''export trade assets'' means—

(1) working capital reasonably necessary for the production of export trade income,

(2) inventory of export property held for use, consumption, or disposition outside the United States,

(3) facilities located outside the United States for the storage, handling, transportation, packaging, or servicing of export property, and

(4) evidences of indebtedness executed by persons, other than related persons, in connection with payment for purchases of export property for use, consumption, or disposition outside the United States, or in connection with the payment for services described in subsections (b)(2) and (3).

(d) Export promotion expenses

For purposes of this subpart, the term ''export promotion expenses'' means the following expenses paid or incurred in the receipt or production of export trade income—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered for such purpose,

(2) rentals or other payments for the use of property actually used for such purpose,

(3) a reasonable allowance for the exhaustion, wear and tear, or obsolescence of property actually used for such purpose, and

(4) any other ordinary and necessary expenses of the corporation to the extent reasonably allocable to the receipt or production of export trade income.

No expense incurred within the United States shall be treated as an export promotion expense within the meaning of the preceding sentence, unless at least 90 percent of each category of expenses described in such sentence is incurred outside the United States.

(e) Export property

For purposes of this subpart, the term ''export property'' means any property or any interest in property manufactured, produced, grown, or extracted in the United States.

(f) Unrelated person

For purposes of this subpart, the term ''unrelated person'' means a person other than a related person as defined in section 954(d)(3).

(Added Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1029; amended Pub. L. 92–178, title V, § 505(c), Dec. 10, 1971, 85 Stat. 553.)

AMENDMENTS

1971—Subsec. (a)(3). Pub. L. 92–178 added par. (3).

TREATMENT OF CERTAIN FORMER EXPORT TRADE CORPORATIONS

Pub. L. 99–514, title XVIII, § 1876(m), Oct. 22, 1986, 100 Stat. 2901, provided that: ''If—

''(1) a corporation which is not an export trading corporation for its most recent taxable year ending before the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984] but was an export trading corporation for any prior taxable year, and

''(2)(A) such corporation may not qualify as an export trade corporation for any taxable year beginning after December 31, 1984, by reason of section 971(a)(3) of the Internal Revenue Code of 1954 [now 1986], or (B) such corporation makes an election, before the date 6 months after the date of the enactment of this Act [Oct. 22, 1986], not to be treated as an export trade corporation with respect to taxable years beginning after December 31, 1984,

rules similar to the rules of paragraphs (2) and (4) of section 805(b) of the Tax Reform Act of 1984 [set out as a note under section 991 of this title] shall apply to such corporation. For purposes of the preceding sentence, the term 'export trade corporation' has the meaning given such term by section 971 of such Code.''

[§ 972. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(120), Oct. 4, 1976, 90 Stat. 1784]

Section, Pub. L. 87–834, § 12(a), Oct. 16, 1962, 76 Stat. 1031, related to the consolidation of a group of export trade corporations for treatment as a single controlled foreign corporation for tax purposes.

[SUBPART H—REPEALED]

[§ 981. Repealed. Pub. L. 94–455, title X, § 1012(b)(2), Oct. 4, 1976, 90 Stat. 1614]

Section, Pub. L. 89–809, title I, § 105(e)(1), Nov. 13, 1966, 80 Stat. 1565, related to income of certain nonresident United States citizens subject to foreign community property laws.

SUBPART I—ADMISSIBILITY OF DOCUMENTATION MAINTAINED IN FOREIGN COUNTRIES

Sec.
982. Admissibility of documentation maintained in foreign countries.

AMENDMENTS

1982—Pub. L. 97–248, title III, § 337(a), Sept. 3, 1982, 96 Stat. 629, added subpart I and item 982.

§ 982. Admissibility of documentation maintained in foreign countries

(a) General rule

If the taxpayer fails to substantially comply with any formal document request arising out of the examination of the tax treatment of any item (hereinafter in this section referred to as the ''examined item'') before the 90th day after the date of the mailing of such request on motion by the Secretary, any court having jurisdiction of a civil proceeding in which the tax treatment of the examined item is an issue shall prohibit the introduction by the taxpayer of any foreign-based documentation covered by such request.

(b) Reasonable cause exception

(1) In general

Subsection (a) shall not apply with respect to any documentation if the taxpayer establishes that the failure to provide the documentation as requested by the Secretary is due to reasonable cause.

(2) Foreign nondisclosure law not reasonable cause

For purposes of paragraph (1), the fact that a foreign jurisdiction would impose a civil or criminal penalty on the taxpayer (or any other person) for disclosing the requested documentation is not reasonable cause.

(c) Formal document request

For purposes of this section—

(1) Formal document request

The term ''formal document request'' means any request (made after the normal request procedures have failed to produce the requested documentation) for the production of foreign-based documentation which is mailed by registered or certified mail to the taxpayer at his last known address and which sets forth—

(A) the time and place for the production of the documentation,

(B) a statement of the reason the documentation previously produced (if any) is not sufficient,

(C) a description of the documentation being sought, and

(D) the consequences to the taxpayer of the failure to produce the documentation described in subparagraph (C).

(2) Proceeding to quash

(A) In general

Notwithstanding any other law or rule of law, any person to whom a formal document request is mailed shall have the right to begin a proceeding to quash such request not later than the 90th day after the day such request was mailed. In any such proceeding, the Secretary may seek to compel compliance with such request.

(B) Jurisdiction

The United States district court for the district in which the person (to whom the formal document request is mailed) resides or is found shall have jurisdiction to hear any proceeding brought under subparagraph (A). An order denying the petition shall be deemed a final order which may be appealed.

(C) Suspension of 90-day period

The running of the 90-day period referred to in subsection (a) shall be suspended during any period during which a proceeding brought under subparagraph (A) is pending.

(d) Definitions and special rules

For purposes of this section—

(1) Foreign-based documentation

The term ''foreign-based documentation'' means any documentation which is outside the United States and which may be relevant or material to the tax treatment of the examined item.

(2) Documentation

The term ''documentation'' includes books and records.

(3) Authority to extend 90-day period

The Secretary, and any court having jurisdiction over a proceeding under subsection (c)(2), may extend the 90-day period referred to in subsection (a).

(e) Suspension of statute of limitations

If any person takes any action as provided in subsection (c)(2), the running of any period of limitations under section 6501 (relating to the assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to such person shall be suspended for the period during which the proceeding under such subsection, and appeals therein, are pending.

(Added Pub. L. 97–248, title III, §337(a), Sept. 3, 1982, 96 Stat. 629; amended Pub. L. 98–369, div. A, title VII, §714(k), July 18, 1984, 98 Stat. 963.)

AMENDMENTS

1984—Subsec. (d)(3), (4). Pub. L. 98–369 redesignated par. (4) as (3) and struck out former par. (3) which provided that an item was to be treated as foreign connected if directly or indirectly from a source outside the United States, or the item (in whole or in part) purported to arise outside the United States, or was otherwise dependent on transactions occurring outside the United States.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE

Section 337(c) of Pub. L. 97–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [enacting this section] shall apply with respect to formal document requests (as defined in section 982(c)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as added by this section) mailed after the date of the enactment of this Act [Sept. 3, 1982].''

SUBPART J—FOREIGN CURRENCY TRANSACTIONS

Sec.
985. Functional currency.
986. Determination of foreign taxes and foreign corporation's earnings and profits.
987. Branch transactions.
988. Treatment of certain foreign currency transactions.
989. Other definitions and special rules.

AMENDMENTS

1988—Pub. L. 100–647, title I, §1012(v)(1)(C), Nov. 10, 1988, 102 Stat. 3529, added item 986 and struck out former item 986 ''Determination of foreign corporation's earnings and profits and foreign taxes''.

§985. Functional currency

(a) In general

Unless otherwise provided in regulations, all determinations under this subtitle shall be made in the taxpayer's functional currency.

(b) Functional currency

(1) In general

For purposes of this subtitle, the term ''functional currency'' means—

(A) except as provided in subparagraph (B), the dollar, or

(B) in the case of a qualified business unit, the currency of the economic environment in which a significant part of such unit's activities are conducted and which is used by such unit in keeping its books and records.

(2) Functional currency where activities primarily conducted in dollars

The functional currency of any qualified business unit shall be the dollar if activities of such unit are primarily conducted in dollars.

(3) Election

To the extent provided in regulations, the taxpayer may elect to use the dollar as the functional currency for any qualified business unit if—

(A) such unit keeps its books and records in dollars, or

(B) the taxpayer uses a method of accounting that approximates a separate transactions method.

Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(4) Change in functional currency treated as a change in method of accounting

Any change in the functional currency shall be treated as a change in the taxpayer's method of accounting for purposes of section 481 under procedures to be established by the Secretary.

(Added Pub. L. 99–514, title XII, §1261(a), Oct. 22, 1986, 100 Stat. 2585.)

EFFECTIVE DATE

Section 1261(e) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this subpart and amending sections 1092 and 1256 of this title] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL RULES FOR PURPOSES OF SECTIONS 902 AND 960.—For purposes of applying sections 902 and 960 of the Internal Revenue Code of 1986, the amendments made by this section shall apply to—

''(A) earnings and profits of the foreign corporation for taxable years beginning after December 31, 1986, and

''(B) foreign taxes paid or accrued by the foreign corporation with respect to such earnings and profits.''

§986. Determination of foreign taxes and foreign corporation's earnings and profits

(a) Foreign income taxes

(1) Translation of accrued taxes

(A) In general

For purposes of determining the amount of the foreign tax credit, in the case of a taxpayer who takes foreign income taxes into account when accrued, the amount of any foreign income taxes (and any adjustment thereto) shall be translated into dollars by using the average exchange rate for the taxable year to which such taxes relate.

(B) Exception for certain taxes

Subparagraph (A) shall not apply to any foreign income taxes—

(i) paid after the date 2 years after the close of the taxable year to which such taxes relate, or

(ii) paid before the beginning of the taxable year to which such taxes relate.

(C) Exception for inflationary currencies

Subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any inflationary currency (as determined under regulations).

(D) Elective exception for taxes paid other than in functional currency

(i) In general

At the election of the taxpayer, subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any currency other than in the taxpayer's functional currency.

(ii) Application to qualified business units

An election under this subparagraph may apply to foreign income taxes attributable to a qualified business unit in accordance with regulations prescribed by the Secretary.

(iii) Election

Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(E) Special rule for regulated investment companies

In the case of a regulated investment company which takes into account income on an accrual basis, subparagraphs (A) through (D) shall not apply and foreign income taxes paid or accrued with respect to such income shall be translated into dollars using the exchange rate as of the date the income accrues.

(F) Cross reference

For adjustments where tax is not paid within 2 years, see section 905(c).

(2) Translation of taxes to which paragraph (1) does not apply

For purposes of determining the amount of the foreign tax credit, in the case of any foreign income taxes to which subparagraph (A) or (E) of paragraph (1) does not apply—

(A) such taxes shall be translated into dollars using the exchange rates as of the time such taxes were paid to the foreign country or possession of the United States, and

(B) any adjustment to the amount of such taxes shall be translated into dollars using—

(i) except as provided in clause (ii), the exchange rate as of the time when such adjustment is paid to the foreign country or possession, or

(ii) in the case of any refund or credit of foreign income taxes, using the exchange rate as of the time of the original payment of such foreign income taxes.

(3) Authority to permit use of average rates

To the extent prescribed in regulations, the average exchange rate for the period (specified in such regulations) during which the taxes or adjustment is paid may be used instead of the exchange rate as of the time of such payment.

(4) Foreign income taxes

For purposes of this subsection, the term ''foreign income taxes'' means any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States.

(b) Earnings and profits and distributions

For purposes of determining the tax under this subtitle—

(1) of any shareholder of any foreign corporation, the earnings and profits of such corporation shall be determined in the corporation's functional currency, and

(2) in the case of any United States person, the earnings and profits determined under paragraph (1) (when distributed, deemed distributed, or otherwise taken into account under this subtitle) shall (if necessary) be translated into dollars using the appropriate exchange rate.

(c) Previously taxed earnings and profits

(1) In general

Foreign currency gain or loss with respect to distributions of previously taxed earnings and profits (as described in section 959 or 1293(c)) attributable to movements in exchange rates between the times of deemed and actual distribution shall be recognized and treated as ordinary income or loss from the same source as the associated income inclusion.

(2) Distributions through tiers

The Secretary shall prescribe regulations with respect to the treatment of distributions of previously taxed earnings and profits through tiers of foreign corporations.

(Added Pub. L. 99–514, title XII, § 1261(a), Oct. 22, 1986, 100 Stat. 2586; amended Pub. L. 100–647, title I, § 1012(v)(1)(A), Nov. 10, 1988, 102 Stat. 3528; Pub. L. 105–34, title XI, § 1102(a)(1), (b)(1), Aug. 5, 1997, 111 Stat. 963, 965; Pub. L. 108–357, title IV, § 408(a), (b), Oct. 22, 2004, 118 Stat. 1499.)

AMENDMENTS

2004—Subsec. (a)(1)(D). Pub. L. 108–357, § 408(a), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(1)(E). Pub. L. 108–357, § 408(b)(1), added subpar. (E). Former subpar. (E) redesignated (F).

Pub. L. 108–357, § 408(a), redesignated subpar. (D) as (E).

Subsec. (a)(1)(F). Pub. L. 108–357, § 408(b)(1), redesignated subpar. (E) as (F).

Subsec. (a)(2). Pub. L. 108–357, § 408(b)(2), inserted ''or (E)'' after ''subparagraph (A)'' in introductory provisions.

1997—Subsec. (a). Pub. L. 105–34, § 1102(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

''(a) FOREIGN TAXES.—

''(1) IN GENERAL.—For purposes of determining the amount of the foreign tax credit—

''(A) any foreign income taxes shall be translated into dollars using the exchange rates as of the time such taxes were paid to the foreign country or possession of the United States, and

''(B) any adjustment to the amount of foreign income taxes shall be translated into dollars using—

''(i) except as provided in clause (ii), the exchange rate as of the time when such adjustment is paid to the foreign country or possession, or

''(ii) in the case of any refund or credit of foreign income taxes, using the exchange rate as of the time of original payment of such foreign income taxes.

''(2) FOREIGN INCOME TAXES.—For purposes of paragraph (1), 'foreign income taxes' means any income, war profits, or excess profits taxes paid to any foreign country or to any possession of the United States.''

Subsec. (a)(3), (4). Pub. L. 105–34, § 1102(b)(1), added par. (3) and redesignated former par. (3) as (4).

1988—Pub. L. 100–647 substituted ''foreign taxes and foreign corporation's earnings and profits'' for ''foreign corporation's earnings and profits and foreign taxes'' in heading, and revised and restructured the provisions of subsecs. (a) and (b).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title IV, § 408(c), Oct. 22, 2004, 118 Stat. 1500, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1102(c)(1) of Pub. L. 105–34 provided that: ''The amendments made by subsections (a)(1) and (b) [amending this section and section 989 of this title] shall apply to taxes paid or accrued in taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as a note under section 985 of this title.

§ 987. Branch transactions

In the case of any taxpayer having 1 or more qualified business units with a functional currency other than the dollar, taxable income of such taxpayer shall be determined—

(1) by computing the taxable income or loss separately for each such unit in its functional currency,

(2) by translating the income or loss separately computed under paragraph (1) at the appropriate exchange rate, and

(3) by making proper adjustments (as prescribed by the Secretary) for transfers of property between qualified business units of the taxpayer having different functional currencies, including—

(A) treating post-1986 remittances from each such unit as made on a pro rata basis out of post-1986 accumulated earnings, and

(B) treating gain or loss determined under this paragraph as ordinary income or loss, respectively, and sourcing such gain or loss by reference to the source of the income giving rise to post-1986 accumulated earnings.

(Added Pub. L. 99–514, title XII, § 1261(a), Oct. 22, 1986, 100 Stat. 2586; amended Pub. L. 100–647, title I, § 1012(v)(1)(B), Nov. 10, 1988, 102 Stat. 3528.)

AMENDMENTS

1988—Par. (4). Pub. L. 100–647 struck out par. (4) which provided for translation of foreign income taxes paid by each qualified business unit of the taxpayer in the same manner as provided under section 986(b).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as a note under section 985 of this title.

§ 988. Treatment of certain foreign currency transactions

(a) General rule

Notwithstanding any other provision of this chapter—

(1) Treatment as ordinary income or loss

(A) In general

Except as otherwise provided in this section, any foreign currency gain or loss attributable to a section 988 transaction shall be computed separately and treated as ordinary income or loss (as the case may be).

(B) Special rule for forward contracts, etc.

Except as provided in regulations, a taxpayer may elect to treat any foreign currency gain or loss attributable to a forward contract, a futures contract, or option described in subsection (c)(1)(B)(iii) which is a capital asset in the hands of the taxpayer and which is not a part of a straddle (within the meaning of section 1092(c), without regard to paragraph (4) thereof) as capital gain or loss (as the case may be) if the taxpayer makes such election and identifies such transaction before the close of the day on which such transaction is entered into (or such earlier time as the Secretary may prescribe).

(2) Gain or loss treated as interest for certain purposes

To the extent provided in regulations, any amount treated as ordinary income or loss under paragraph (1) shall be treated as interest income or expense (as the case may be).

(3) Source

(A) In general

Except as otherwise provided in regulations, in the case of any amount treated as ordinary income or loss under paragraph (1) (without regard to paragraph (1)(B)), the source of such amount shall be determined by reference to the residence of the taxpayer or the qualified business unit of the taxpayer on whose books the asset, liability, or item of income or expense is properly reflected.

(B) Residence

For purposes of this subpart—

(i) In general

The residence of any person shall be—

(I) in the case of an individual, the country in which such individual's tax home (as defined in section 911(d)(3)) is located,

(II) in the case of any corporation, partnership, trust, or estate which is a United States person (as defined in section 7701(a)(30)), the United States, and

(III) in the case of any corporation, partnership, trust, or estate which is not a United States person, a country other than the United States.

If an individual does not have a tax home (as so defined), the residence of such individual shall be the United States if such individual is a United States citizen or a resident alien and shall be a country other than the United States if such individual is not a United States citizen or a resident alien.

(ii) Exception

In the case of a qualified business unit of any taxpayer (including an individual), the residence of such unit shall be the country in which the principal place of business of such qualified business unit is located.

(iii) Special rule for partnerships

To the extent provided in regulations, in the case of a partnership, the determination of residence shall be made at the partner level.

(C) Special rule for certain related party loans

Except to the extent provided in regulations, in the case of a loan by a United States person or a related person to a 10-percent owned foreign corporation which is denominated in a currency other than the dollar and bears interest at a rate at least 10 percentage points higher than the Federal mid-term rate (determined under section 1274(d)) at the time such loan is entered into, the following rules shall apply:

(i) For purposes of section 904 only, such loan shall be marked to market on an annual basis.

(ii) Any interest income earned with respect to such loan for the taxable year shall be treated as income from sources within the United States to the extent of any loss attributable to clause (i).

For purposes of this subparagraph, the term ''related person'' has the meaning given such term by section 954(d)(3), except that such section shall be applied by substituting ''United States person'' for ''controlled foreign corporation'' each place such term appears.

(D) 10-percent owned foreign corporation

The term ''10-percent owned foreign corporation'' means any foreign corporation in which the United States person owns directly or indirectly at least 10 percent of the voting stock.

(b) Foreign currency gain or loss

For purposes of this section—

(1) Foreign currency gain

The term ''foreign currency gain'' means any gain from a section 988 transaction to the extent such gain does not exceed gain realized by reason of changes in exchange rates on or after the booking date and before the payment date.

(2) Foreign currency loss

The term ''foreign currency loss'' means any loss from a section 988 transaction to the extent such loss does not exceed the loss realized by reason of changes in exchange rates on or after the booking date and before the payment date.

(3) Special rule for certain contracts, etc.

In the case of any section 988 transaction described in subsection (c)(1)(B)(iii), any gain or loss from such transaction shall be treated as foreign currency gain or loss (as the case may be).

(c) Other definitions

For purposes of this section—

(1) Section 988 transaction

(A) In general

The term ''section 988 transaction'' means any transaction described in subparagraph (B) if the amount which the taxpayer is entitled to receive (or is required to pay) by reason of such transaction—

(i) is denominated in terms of a nonfunctional currency, or

(ii) is determined by reference to the value of 1 or more nonfunctional currencies.

(B) Description of transactions

For purposes of subparagraph (A), the following transactions are described in this subparagraph:

(i) The acquisition of a debt instrument or becoming the obligor under a debt instrument.

(ii) Accruing (or otherwise taking into account) for purposes of this subtitle any item of expense or gross income or receipts which is to be paid or received after the date on which so accrued or taken into account.

(iii) Entering into or acquiring any forward contract, futures contract, option, or similar financial instrument.

The Secretary may prescribe regulations excluding from the application of clause (ii) any class of items the taking into account of which is not necessary to carry out the purposes of this section by reason of the small amounts or short periods involved, or otherwise.

(C) Special rules for disposition of nonfunctional currency

(i) In general

In the case of any disposition of any nonfunctional currency—

(I) such disposition shall be treated as a section 988 transaction, and

(II) any gain or loss from such transaction shall be treated as foreign currency gain or loss (as the case may be).

(ii) Nonfunctional currency

For purposes of this section, the term ''nonfunctional currency'' includes coin or

currency, and nonfunctional currency denominated demand or time deposits or similar instruments issued by a bank or other financial institution.

(D) Exception for certain instruments marked to market

(i) In general

Clause (iii) of subparagraph (B) shall not apply to any regulated futures contract or nonequity option which would be marked to market under section 1256 if held on the last day of the taxable year.

(ii) Election out

(I) In general

The taxpayer may elect to have clause (i) not apply to such taxpayer. Such an election shall apply to contracts held at any time during the taxable year for which such election is made or any succeeding taxable year unless such election is revoked with the consent of the Secretary.

(II) Time for making election

Except as provided in regulations, an election under subclause (I) for any taxable year shall be made on or before the 1st day of such taxable year (or, if later, on or before the 1st day during such year on which the taxpayer holds a contract described in clause (i)).

(III) Special rule for partnerships, etc.

In the case of a partnership, an election under subclause (I) shall be made by each partner separately. A similar rule shall apply in the case of an S corporation.

(iii) Treatment of certain partnerships

This subparagraph shall not apply to any income or loss of a partnership for any taxable year if such partnership made an election under subparagraph (E)(iii)(V) for such year or any preceding year.

(E) Special rules for certain funds

(i) In general

In the case of a qualified fund, clause (iii) of subparagraph (B) shall not apply to any instrument which would be marked to market under section 1256 if held on the last day of the taxable year (determined after the application of clause (iv)).

(ii) Special rule where electing partnership does not qualify

If any partnership made an election under clause (iii)(V) for any taxable year and such partnership has a net loss for such year or any succeeding year from instruments referred to in clause (i), the rules of clauses (i) and (iv) shall apply to any such loss year whether or not such partnership is a qualified fund for such year.

(iii) Qualified fund defined

For purposes of this subparagraph, the term ''qualified fund'' means any partnership if—

(I) at all times during the taxable year (and during each preceding taxable year to which an election under subclause (V) applied), such partnership has at least 20 partners and no single partner owns more than 20 percent of the interests in the capital or profits of the partnership,

(II) the principal activity of such partnership for such taxable year (and each such preceding taxable year) consists of buying and selling options, futures, or forwards with respect to commodities,

(III) at least 90 percent of the gross income of the partnership for the taxable year (and for each such preceding taxable year) consisted of income or gains described in subparagraph (A), (B), or (G) of section 7704(d)(1) or gain from the sale or disposition of capital assets held for the production of interest or dividends,

(IV) no more than a de minimis amount of the gross income of the partnership for the taxable year (and each such preceding taxable year) was derived from buying and selling commodities, and

(V) an election under this subclause applies to the taxable year.

An election under subclause (V) for any taxable year shall be made on or before the 1st day of such taxable year (or, if later, on or before the 1st day during such year on which the partnership holds an instrument referred to in clause (i)). Any such election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.

(iv) Treatment of certain currency contracts

(I) In general

Except as provided in regulations, in the case of a qualified fund, any bank forward contract, any foreign currency futures contract traded on a foreign exchange, or to the extent provided in regulations any similar instrument, which is not otherwise a section 1256 contract shall be treated as a section 1256 contract for purposes of section 1256.

(II) Gains and losses treated as short-term

In the case of any instrument treated as a section 1256 contract under subclause (I), subparagraph (A) of section 1256(a)(3) shall be applied by substituting ''100 percent'' for ''40 percent'' (and subparagraph (B) of such section shall not apply).

(v) Special rules for clause (iii)(I)

(I) Certain general partners

The interest of a general partner in the partnership shall not be treated as failing to meet the 20-percent ownership requirements of clause (iii)(I) for any taxable year of the partnership if, for the taxable year of the partner in which such partnership taxable year ends, such part-

ner (and each corporation filing a consolidated return with such partner) had no ordinary income or loss from a section 988 transaction which is foreign currency gain or loss (as the case may be).

(II) Treatment of incentive compensation

For purposes of clause (iii)(I), any income allocable to a general partner as incentive compensation based on profits rather than capital shall not be taken into account in determining such partner's interest in the profits of the partnership.

(III) Treatment of tax-exempt partners

Except as provided in regulations, the interest of a partner in the partnership shall not be treated as failing to meet the 20-percent ownership requirements of clause (iii)(I) if none of the income of such partner from such partnership is subject to tax under this chapter (whether directly or through 1 or more passthru entities).

(IV) Look-thru rule

In determining whether the requirements of clause (iii)(I) are met with respect to any partnership, except to the extent provided in regulations, any interest in such partnership held by another partnership shall be treated as held proportionately by the partners in such other partnership.

(vi) Other special rules

For purposes of this subparagraph—

(I) Related persons

Interests in the partnership held by persons related to each other (within the meaning of sections 267(b) and 707(b)) shall be treated as held by 1 person.

(II) Predecessors

References to any partnership shall include a reference to any predecessor thereof.

(III) Inadvertent terminations

Rules similar to the rules of section 7704(e) shall apply.

(IV) Treatment of certain debt instruments

For purposes of clause (iii)(IV), any debt instrument which is a section 988 transaction shall be treated as a commodity.

(2) Booking date

The term ''booking date'' means—

(A) in the case of a transaction described in paragraph (1)(B)(i), the date of acquisition or on which the taxpayer becomes the obligor, or

(B) in the case of a transaction described in paragraph (1)(B)(ii), the date on which accrued or otherwise taken into account.

(3) Payment date

The term ''payment date'' means the date on which the payment is made or received.

(4) Debt instrument

The term ''debt instrument'' means a bond, debenture, note, or certificate or other evidence of indebtedness. To the extent provided in regulations, such term shall include preferred stock.

(5) Special rules where taxpayer takes or makes delivery

If the taxpayer takes or makes delivery in connection with any section 988 transaction described in paragraph (1)(B)(iii), any gain or loss (determined as if the taxpayer sold the contract, option, or instrument on the date on which he took or made delivery for its fair market value on such date) shall be recognized in the same manner as if such contract, option, or instrument were so sold.

(d) Treatment of 988 hedging transactions

(1) In general

To the extent provided in regulations, if any section 988 transaction is part of a 988 hedging transaction, all transactions which are part of such 988 hedging transaction shall be integrated and treated as a single transaction or otherwise treated consistently for purposes of this subtitle. For purposes of the preceding sentence, the determination of whether any transaction is a section 988 transaction shall be determined without regard to whether such transaction would otherwise be marked-to-market under section 475 or 1256 and such term shall not include any transaction with respect to which an election is made under subsection (a)(1)(B). Sections 475, 1092, and 1256 shall not apply to a transaction covered by this subsection.

(2) 988 hedging transaction

For purposes of paragraph (1), the term ''988 hedging transaction'' means any transaction—

(A) entered into by the taxpayer primarily—

(i) to manage risk of currency fluctuations with respect to property which is held or to be held by the taxpayer, or

(ii) to manage risk of currency fluctuations with respect to borrowings made or to be made, or obligations incurred or to be incurred, by the taxpayer, and

(B) identified by the Secretary or the taxpayer as being a 988 hedging transaction.

(e) Application to individuals

(1) In general

The preceding provisions of this section shall not apply to any section 988 transaction entered into by an individual which is a personal transaction.

(2) Exclusion for certain personal transactions

If—

(A) nonfunctional currency is disposed of by an individual in any transaction, and

(B) such transaction is a personal transaction,

no gain shall be recognized for purposes of this subtitle by reason of changes in exchange rates after such currency was acquired by such individual and before such disposition. The

preceding sentence shall not apply if the gain which would otherwise be recognized on the transaction exceeds $200.

(3) Personal transactions

For purposes of this subsection, the term ''personal transaction'' means any transaction entered into by an individual, except that such term shall not include any transaction to the extent that expenses properly allocable to such transaction meet the requirements of—

(A) section 162 (other than traveling expenses described in subsection (a)(2) thereof), or

(B) section 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes).

(Added Pub. L. 99–514, title XII, §1261(a), Oct. 22, 1986, 100 Stat. 2587; amended Pub. L. 100–647, title I, §1012(v)(2)(A), (3), (4), (6)–(8), title VI, §6130(a), (b), Nov. 10, 1988, 102 Stat. 3529, 3530, 3717; Pub. L. 101–239, title VII, §7811(i)(7), Dec. 19, 1989, 103 Stat. 2410; Pub. L. 103–66, title XIII, §13223(b)(1), Aug. 10, 1993, 107 Stat. 484; Pub. L. 105–34, title XI, §1104(a), Aug. 5, 1997, 111 Stat. 967; Pub. L. 106–170, title V, §532(b)(3), Dec. 17, 1999, 113 Stat. 1930.)

AMENDMENTS

1999—Subsec. (d)(2)(A)(i), (ii). Pub. L. 106–170 substituted ''to manage'' for ''to reduce''.

1997—Subsec. (e). Pub. L. 105–34 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''This section shall apply to section 988 transactions entered into by an individual only to the extent expenses properly allocable to such transactions meet the requirements of section 162 or 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes).''

1993—Subsec. (d)(1). Pub. L. 103–66 substituted ''section 475 or 1256'' for ''section 1256'' and ''Sections 475, 1092, and 1256'' for ''Sections 1092 and 1256''.

1989—Subsec. (a). Pub. L. 101–239 inserted introductory provision ''Notwithstanding any other provision of this chapter—''.

1988—Subsec. (a)(3)(B)(i). Pub. L. 100–647, §1012(v)(8), inserted at end ''If an individual does not have a tax home (as so defined), the residence of such individual shall be the United States if such individual is a United States citizen or a resident alien and shall be a country other than the United States if such individual is not a United States citizen or a resident alien.''

Subsec. (a)(3)(B)(iii). Pub. L. 100–647, §1012(v)(7), added cl. (iii).

Subsec. (b)(3). Pub. L. 100–647, §1012(v)(3)(A), added par. (3).

Subsec. (c)(1)(B)(iii). Pub. L. 100–647, §6130(a), struck out ''unless such instrument would be marked to market under section 1256 if held on the last day of the taxable year'' after ''similar financial instrument''.

Pub. L. 100–647, §1012(v)(6), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''Entering into or acquiring any forward contract, futures contract, option, or similar financial instrument if such instrument is not marked to market at the close of the taxable year under section 1256.''

Subsec. (c)(1)(C)(i)(II). Pub. L. 100–647, §1012(v)(3)(B), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''for purposes of determining the foreign currency gain or loss from such transaction, paragraphs (1) and (2) of subsection (b) shall be applied by substituting 'acquisition date' for 'booking date' and 'disposition' for 'payment date'.''

Subsec. (c)(1)(D), (E). Pub. L. 100–647, §6130(b), added subpars. (D) and (E).

Subsec. (c)(2)(C). Pub. L. 100–647, §1012(v)(3)(C), struck out subpar. (C) which defined ''booking date'' in the case of a transaction described in par. (1)(B)(iii) as the date on which the position is entered into or acquired.

Subsec. (c)(3). Pub. L. 100–647, §1012(v)(3)(D), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The term 'payment date' means—

''(A) in the case of a transaction described in paragraph (1)(B)(i) or (ii), the date on which payment is made or received, or

''(B) in the case of a transaction described in paragraph (1)(B)(iii), the date payment is made or received or the date the taxpayer's rights with respect to the position are terminated.''

Subsec. (c)(5). Pub. L. 100–647, §1012(v)(2)(A), added par. (5).

Subsec. (d)(1). Pub. L. 100–647, §1012(v)(4), substituted ''this subtitle'' for ''this section''.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1104(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to all taxable years ending on or after Dec. 31, 1993, with special rules for taxpayers required to change accounting methods and for floor specialists and market makers, see section 13223(c) of Pub. L. 103–66, set out as an Effective Date note under section 475 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(v)(2)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall not apply in any case in which the taxpayer takes or makes delivery before June 11, 1987.''

Amendment by section 1012(v)(3), (4), (6)–(8) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6130(d) of Pub. L. 100–647 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 1092 of this title] shall apply with respect to forward contracts, future contracts, options, and similar instruments entered into or acquired after October 21, 1988.

''(2) TIME FOR MAKING ELECTION.—The time for making any election under subparagraph (D) or (E) of section 988(c)(1) of the 1986 Code shall not expire before the date 30 days after the date of the enactment of this Act [Nov. 10, 1988].

''(3) TRANSITIONAL RULES.—

''(A) The requirements of subclause (IV) of section 988(c)(1)(E)(iii) of the 1986 Code (as added by subsection (b)) shall not apply to periods before the date of the enactment of this Act.

''(B) In the case of any partner in an existing partnership, the 20-percent ownership requirements of subclause (I) of such section 988(c)(1)(E)(iii) shall be treated as met during any period during which such partner does not own a percentage interest in the capital or profits of such partnership greater than

33⅓ percent (or, if lower, the lowest such percentage interest of such partner during any prior period after October 21, 1988, during which such partnership is in existence). For purposes of the preceding sentence, the term 'existing partnership' means any partnership if—

''(i) such partnership was in existence on October 21, 1988, and principally engaged on such date in buying and selling options, futures, or forwards with respect to commodities, or

''(ii) a registration statement was filed with respect to such partnership with the Securities and Exchange Commission on or before such date and such registration statement indicated that the principal activity of such partnership will consist of buying and selling instruments referred to in clause (i).''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as a note under section 985 of this title.

§ 989. Other definitions and special rules

(a) Qualified business unit

For purposes of this subpart, the term ''qualified business unit'' means any separate and clearly identified unit of a trade or business of a taxpayer which maintains separate books and records.

(b) Appropriate exchange rate

Except as provided in regulations, for purposes of this subpart, the term ''appropriate exchange rate'' means—

(1) in the case of an actual distribution of earnings and profits, the spot rate on the date such distribution is included in income,

(2) in the case of an actual or deemed sale or exchange of stock in a foreign corporation treated as a dividend under section 1248, the spot rate on the date the deemed dividend is included in income,

(3) in the case of any amounts included in income under section 951(a)(1)(A) or 1293(a), the average exchange rate for the taxable year of the foreign corporation, or

(4) in the case of any other qualified business unit of a taxpayer, the average exchange rate for the taxable year of such qualified business unit.

For purposes of the preceding sentence, any amount included in income under section 951(a)(1)(B) shall be treated as an actual distribution made on the last day of the taxable year for which such amount was so included.

(c) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subpart, including regulations—

(1) setting forth procedures to be followed by taxpayers with qualified business units using a net worth method of accounting before the enactment of this subpart,

(2) limiting the recognition of foreign currency loss on certain remittances from qualified business units,

(3) providing for the recharacterization of interest and principal payments with respect to obligations denominated in certain hyperinflationary currencies,

(4) providing for alternative adjustments to the application of section 905(c),

(5) providing for the appropriate treatment of related party transactions (including transactions between qualified business units of the same taxpayer), and

(6) setting forth procedures for determining the average exchange rate for any period.

(Added Pub. L. 99–514, title XII, § 1261(a), Oct. 22, 1986, 100 Stat. 2590; amended Pub. L. 100–647, title I, § 1012(v)(5), Nov. 10, 1988, 102 Stat. 3529; Pub. L. 103–66, title XIII, § 13231(c)(4)(C), Aug. 10, 1993, 107 Stat. 499; Pub. L. 104–188, title I, § 1501(b)(9), Aug. 20, 1996, 110 Stat. 1826; Pub. L. 105–34, title XI, § 1102(b)(2), (3), Aug. 5, 1997, 111 Stat. 966; Pub. L. 108–357, title IV, § 413(c)(17), Oct. 22, 2004, 118 Stat. 1508.)

REFERENCES IN TEXT

The enactment of this subpart, referred to in subsec. (c)(1), probably means the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

AMENDMENTS

2004—Subsec. (b)(3). Pub. L. 108–357 struck out '', 551(a),'' after ''section 951(a)(1)(A)''.

1997—Subsec. (b)(3), (4). Pub. L. 105–34, § 1102(b)(3), struck out ''weighted'' before ''average exchange rate''.

Subsec. (c)(6). Pub. L. 105–34, § 1102(b)(2), added par. (6).

1996—Subsec. (b). Pub. L. 104–188 substituted ''section 951(a)(1)(B)'' for ''subparagraph (B) or (C) of section 951(a)(1)'' in closing provisions.

1993—Subsec. (b). Pub. L. 103–66 substituted ''subparagraph (B) or (C) of section 951(a)(1)'' for ''section 951(a)(1)(B)'' in last sentence.

1988—Subsec. (b). Pub. L. 100–647 substituted in par. (3) ''section 951(a)(1)(A)'' for ''section 951(a)'' and inserted at end ''For purposes of the preceding sentence, any amount included in income under section 951(a)(1)(B) shall be treated as an actual distribution made on the last day of the taxable year for which such amount was so included.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable to taxes paid or accrued in taxable years beginning after Dec. 31, 1997, see section 1102(c)(1) of Pub. L. 105–34, set out as a note under section 986 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104–188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103–66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of

the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99–514, set out as a note under section 985 of this title.

PART IV—DOMESTIC INTERNATIONAL SALES CORPORATIONS

Subpart		Sec.[1]
A.	Treatment of qualifying corporations ...	991
B.	Treatment of distributions to shareholders	995

AMENDMENTS

1971—Pub. L. 92–178, title V, §501, Dec. 10, 1971, 85 Stat. 535, added part IV to subchapter N of chapter 1.

SUBPART A—TREATMENT OF QUALIFYING CORPORATIONS

Sec.
991. Taxation of a domestic international sales corporation.
992. Requirements of a domestic international sales corporation.
993. Definitions and special rules.[1]
994. Inter-company pricing rules.

§991. Taxation of a domestic international sales corporation

For purposes of the taxes imposed by this subtitle upon a DISC (as defined in section 992(a)), a DISC shall not be subject to the taxes imposed by this subtitle.

(Added Pub. L. 92–178, title V, §501, Dec. 10, 1971, 85 Stat. 535; amended Pub. L. 105–206, title VI, §6011(e)(1), July 22, 1998, 112 Stat. 818.)

AMENDMENTS

1998—Pub. L. 105–206 struck out ''except for the tax imposed by chapter 5'' before period at end.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates (section 1131(a) of Pub. L. 105–34), see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 507 of title V of Pub. L. 92–178, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Except as provided in section 505 of this title [amending section 971 of this title and enacting provisions set out as a note under section 970 of this title], the amendments made by sections 501 through 504 of this title [enacting this section and sections 992 to 994, 995 to 997, and 6686 of this title and amending sections 246, 861, 901, 904, 922, 931, 1014, 1504, 6011, 6072, and 6501 of this title] shall apply with respect to taxable years ending after December 31, 1971, except that a corporation may not be a DISC (as defined in section 992(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], added by section 501 of this title) for any taxable year beginning before January 1, 1972.''

TRANSITION RULES FOR DISC'S

Pub. L. 98–369, div. A, title VIII, §805(b), July 18, 1984, 98 Stat. 1001, as amended by Pub. L. 99–514, §2, title XVIII, §1876(h), (n), Oct. 22, 1986, 100 Stat. 2095, 2900, 2901, provided that:

''(1) CLOSE OF 1984 TAXABLE YEARS OF DISC'S.—

''(A) IN GENERAL.—For purposes of applying the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the taxable year of each DISC which begins before January 1, 1985, and which (but for this paragraph) would include January 1, 1985, shall close on December 31, 1984. For purposes of such Code, the requirements of section 992(a)(1)(B) of such Code (relating to percentage of qualified export assets on last day of the taxable year) shall not apply to any taxable year ending on December 31, 1984.

''(B) UNDERPAYMENTS OF ESTIMATED TAX.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, no addition to tax shall be made under section 6654 or 6655 of such Code with respect to any underpayment of any installment required to be paid before April 13, 1985, to the extent the underpayment was created or increased by reason of subparagraph (A).

''(2) EXEMPTION OF ACCUMULATED DISC INCOME FROM TAX.—

''(A) IN GENERAL.—For purposes of applying the Internal Revenue Code of 1986 with respect to actual distributions made after December 31, 1984, by a DISC or former DISC which was a DISC on December 31, 1984, any accumulated DISC income of a DISC or former DISC (within the meaning of section 996(f)(1) of such Code) which is derived before January 1, 1985, shall be treated as previously taxed income (within the meaning of section 996(f)(2) of such Code) with respect to which there had previously been a deemed distribution to which section 996(e)(1) of such Code applied. For purposes of the preceding sentence, the term 'actual distribution' includes a distribution in liquidation, and the earnings and profits of any corporation receiving a distribution not included in gross income by reason of the preceding sentence shall be increased by the amount of such distribution.

''(B) EXCEPTION FOR DISTRIBUTION OF AMOUNTS PREVIOUSLY DISQUALIFIED.—Subparagraph (A) shall not apply to the distribution of any accumulated DISC income of a DISC or former DISC to which section 995(b)(2) of such Code applied by reason of any revocation or disqualification (other than a revocation which under regulations prescribed by the Secretary results solely from the provisions of this title [title VIII, §§801–805, of Pub. L. 98–369, see Effective Date of 1984 Amendment note set out under section 245 of this title].

''(C) TREATMENT OF DISTRIBUTION OF ACCUMULATED DISC INCOME RECEIVED BY COOPERATIVES.—In the case of any actual distribution received by an organization described in section 1381 of such Code and excluded from the gross income of such corporation by reason of subparagraph (A)—

''(i) such amount shall not be included in the gross income of any member of such organization when distributed in the form of a patronage dividend or otherwise, and

''(ii) no deduction shall be allowed to such organization by reason of any such distribution.

''(3) INSTALLMENT TREATMENT OF CERTAIN DEEMED DISTRIBUTIONS OF SHAREHOLDERS.—

''(A) IN GENERAL.—Notwithstanding section 995(b) of such Code, if a shareholder of a DISC elects the application of this paragraph, any qualified distribution shall be treated, for purposes of such Code, as received by such shareholder in 10 equal installments on the last day of each of the 10 taxable years of such shareholder which begins after the first taxable year of such shareholder beginning in 1984. The preceding sentence shall apply without regard to whether the DISC exists after December 31, 1984.

''(B) QUALIFIED DISTRIBUTION.—The term 'qualified distribution' means any distribution which a shareholder is deemed to have received by reason of section 995(b) of such Code with respect to income derived by the DISC in the first taxable year of the DISC beginning—

[1] Section numbers editorially supplied.

[1] So in original. Does not conform to section catchline.

''(i) in 1984, and

''(ii) after the date in 1984 on which the taxable year of such shareholder begins.

''(C) SHORTER PERIOD FOR INSTALLMENTS.—The Secretary of the Treasury or his delegate may by regulations provide for the election by any shareholder to be treated as receiving a qualified distribution over such shorter period as the taxpayer may elect.

''(D) ELECTIONS.—Any election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.

''(4) TREATMENT OF TRANSFERS FROM DISC TO FSC.—Except to the extent provided in regulations, section 367 of such Code shall not apply to transfers made before January 1, 1986 (or, if later, the date 1 year after the date on which the corporation ceases to be a DISC), to a FSC of qualified export assets (as defined in section 993(b) of such Code) held on August 4, 1983, by a DISC in a transaction described in section 351 or 368(a)(1) of such Code.

''(5) DEEMED TERMINATION OF A DISC.—Under regulations prescribed by the Secretary, if any controlled group of corporations of which a DISC is a member establishes a FSC, then any DISC which is a member of such group shall be treated as having terminated its DISC status.

''(6) DEFINITIONS.—For purposes of this subsection, the terms 'DISC' and 'former DISC' have the respective meanings given to such terms by section 992 of such Code.''

SPECIAL RULE FOR EXPORT TRADE CORPORATIONS

Pub. L. 98–369, div. A, title VIII, § 805(c), July 18, 1984, 98 Stat. 1002, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—If, before January 1, 1985, any export trade corporation—

''(A) makes an election under [former] section 927(f)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to be treated as a FSC, or

''(B) elects not to be treated as an export trade corporation with respect to taxable years beginning after December 31, 1984,

rules similar to the rules of paragraphs (2) and (4) of subsection (b) [section 805(b)(2) and (4) of Pub. L. 98–369, set out as a note above] shall apply to such export trade corporation.

''(2) TREATMENT OF TRANSFERS TO FSC.—In the case of any export trade corporation which—

''(A) makes an election described in paragraph (1), and

''(B) transfers before January 1, 1986, any portion of its property to a FSC in a transaction described in section 351 or 368(a)(1),

then, subject to such rules as the Secretary of the Treasury or his delegate may prescribe based on principles similar to the principles of section 505(a) and (b) of the Revenue Act of 1971 [Pub. L. 92–178, set out as a note under section 970 of this title], no income, gain, or loss shall be recognized on such transfer or on the distribution of any stock of the FSC received (or treated as received) in connection with such transfer.

''(3) EXPORT TRADE CORPORATION.—For purposes of this subsection, the term 'export trade corporation' has the meaning given such term by section 971 of the Internal Revenue Code of 1986.''

SUBMISSION OF ANNUAL REPORTS TO CONGRESS

Section 506 of Pub. L. 92–178, which directed, that commencing with calendar year 1972, the Secretary of the Treasury submit annual reports to Congress on the effect and operation of title V, §§ 501–507, of Pub. L. 92–178, was probably intended by Congress to be repealed by Pub. L. 98–369, div. A, title VIII, § 804(b)(1), July 18, 1984, 98 Stat. 1000, which directed that section 806 of Pub. L. 98–178 relating to submission of annual reports to Congress be repealed. Section 804(b)(2) of Pub. L. 98–369 provided that the repeal is applicable to reports for calendar years after 1984.

§ 992. Requirements of a domestic international sales corporation

(a) Definition of "DISC" and "former DISC"

(1) DISC

For purposes of this title, the term ''DISC'' means, with respect to any taxable year, a corporation which is incorporated under the laws of any State and satisfies the following conditions for the taxable year:

(A) 95 percent or more of the gross receipts (as defined in section 993(f)) of such corporation consist of qualified export receipts (as defined in section 993(a)),

(B) the adjusted basis of the qualified export assets (as defined in section 993(b)) of the corporation at the close of the taxable year equals or exceeds 95 percent of the sum of the adjusted basis of all assets of the corporation at the close of the taxable year,

(C) such corporation does not have more than one class of stock and the par or stated value of its outstanding stock is at least $2,500 on each day of the taxable year, and

(D) the corporation has made an election pursuant to subsection (b) to be treated as a DISC and such election is in effect for the taxable year.

(2) Status as DISC after having filed a return as a DISC

The Secretary shall prescribe regulations setting forth the conditions under and the extent to which a corporation which has filed a return as a DISC for a taxable year shall be treated as a DISC for such taxable year for all purposes of this title, notwithstanding the fact that the corporation has failed to satisfy the conditions of paragraph (1).

(3) "Former DISC"

For purposes of this title, the term ''former DISC'' means, with respect to any taxable year, a corporation which is not a DISC for such year but was a DISC in a preceding taxable year and at the beginning of the taxable year has undistributed previously taxed income or accumulated DISC income.

(b) Election

(1) Election

(A) An election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90–day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

(B) Such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on the first day of the first taxable year for which such election is effective consent to such election.

(2) Effect of election

If a corporation makes an election under paragraph (1), then the provisions of this part shall apply to such corporation for the taxable year of the corporation for which made and for all succeeding taxable years and shall apply to

each person who at any time is a shareholder of such corporation for all periods on or after the first day of the first taxable year of the corporation for which the election is effective.

(3) Termination of election

(A) Revocation

An election under this subsection made by any corporation may be terminated by revocation of such election for any taxable year of the corporation after the first taxable year of the corporation for which the election is effective. A termination under this paragraph shall be effective with respect to such election—

(i) for the taxable year in which made, if made at any time during the first 90 days of such taxable year, or

(ii) for the taxable year following the taxable year in which made, if made after the close of such 90 days,

and for all succeeding taxable years of the corporation. Such termination shall be made in such manner as the Secretary shall prescribe by regulations.

(B) Continued failure to be DISC

If a corporation is not a DISC for each of any 5 consecutive taxable years of the corporation for which an election under this subsection is effective, the election shall be terminated and not be in effect for any taxable year of the corporation after such 5th year.

(c) Distributions to meet qualification requirements

(1) In general

Subject to the conditions provided by paragraph (2), a corporation which for a taxable year does not satisfy a condition specified in paragraph (1)(A) (relating to gross receipts) or (1)(B) (relating to assets) of subsection (a) shall nevertheless be deemed to satisfy such condition for such year if it makes a pro rata distribution of property after the close of the taxable year to its shareholders (designated at the time of such distribution as a distribution to meet qualification requirements) with respect to their stock in an amount which is equal to—

(A) if the condition of subsection (a)(1)(A) is not satisfied, the portion of such corporation's taxable income attributable to its gross receipts which are not qualified export receipts for such year,

(B) if the condition of subsection (a)(1)(B) is not satisfied, the fair market value of those assets which are not qualified export assets on the last day of such taxable year, or

(C) if neither of such conditions is satisfied, the sum of the amounts required by subparagraphs (A) and (B).

(2) Reasonable cause for failure

The conditions under paragraph (1) shall be deemed satisfied in the case of a distribution made under such paragraph—

(A) if the failure to meet the requirements of subsection (a)(1)(A) or (B), and the failure to make such distribution prior to the date on which made, are due to reasonable cause; and

(B) the corporation pays, within the 30–day period beginning with the day on which such distribution is made, to the Secretary, if such corporation makes such distribution after the 15th day of the 9th months after the close of the taxable year, an amount determined by multiplying (i) the amount equal to 4½ percent of such distribution, by (ii) the number of its taxable years which begin after the taxable year with respect to which such distribution is made and before such distribution is made. For purposes of this title, any payment made pursuant to this paragraph shall be treated as interest.

(3) Certain distributions made within 8½ months after close of taxable year deemed for reasonable cause

A distribution made on or before the 15th day of the 9th month after the close of the taxable year shall be deemed for reasonable cause for purposes of paragraph (2)(A) if—

(A) at least 70 percent of the gross receipts of such corporation for such taxable year consist of qualified export receipts, and

(B) the adjusted basis of the qualified export assets held by the corporation on the last day of each month of the taxable year equals or exceeds 70 percent of the sum of the adjusted basis of all assets held by the corporation on such day.

(d) Ineligible corporations

The following corporations shall not be eligible to be treated as a DISC—

(1) a corporation exempt from tax by reason of section 501,

(2) a personal holding company (as defined in section 542),

(3) a financial institution to which section 581 applies,

(4) an insurance company subject to the tax imposed by subchapter L,

(5) a regulated investment company (as defined in section 851(a)),

(6) a China Trade Act corporation receiving the special deduction provided in section 941(a),[1] or

(7) an S corporation.

(e) Coordination with personal holding company provisions in case of certain produced film rents

If—

(1) a corporation (hereinafter in this subsection referred to as ''subsidiary'') was established to take advantage of the provisions of this part, and

(2) a second corporation (hereinafter in this subsection referred to as ''parent'') throughout the taxable year owns directly at least 80 percent of the stock of the subsidiary,

then, for purposes of applying subsection (d)(2) and section 541 (relating to personal holding company tax) to the subsidiary for the taxable year, there shall be taken into account under

[1] See References in Text note below.

section 543(a)(5) (relating to produced film rents) any interest in a film acquired by the parent and transferred to the subsidiary as if such interest were acquired by the subsidiary at the time it was acquired by the parent.

(Added Pub. L. 92–178, title V, § 501, Dec. 10, 1971, 85 Stat. 535; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–354, § 5(a)(32), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 98–369, div. A, title VIII, § 802(c)(1), July 18, 1984, 98 Stat. 999; Pub. L. 104–188, title I, § 1616(b)(11), Aug. 20, 1996, 110 Stat. 1857; Pub. L. 110–172, § 11(g)(16), Dec. 29, 2007, 121 Stat. 2491.)

REFERENCES IN TEXT

The China Trade Act, referred to in subsec. (d)(6), is act Sept. 19, 1922, ch. 346, 42 Stat. 849, as amended, which is classified generally to chapter 4 (§ 141 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 141 of Title 15 and Tables.

Section 941, referred to in subsec. (d)(6), was repealed by Pub. L. 94–455, title X, § 1053(c), Oct. 4, 1976, 90 Stat. 1648.

AMENDMENTS

2007—Subsec. (a)(1)(C) to (E). Pub. L. 110–172 inserted ''and'' at end of subpar. (C), substituted period for '', and'' at end of subpar. (D), and struck out subpar. (E) which read as follows: ''such corporation is not a member of any controlled group of which a FSC is a member.''

1996—Subsec. (d)(3). Pub. L. 104–188 struck out ''or 593'' after ''section 581''.

1984—Subsec. (a)(1)(E). Pub. L. 98–369 added subpar. (E).

1982—Subsec. (d)(7). Pub. L. 97–354 substituted ''an S corporation'' for ''an electing small business corporation (as defined in section 1371(b))''.

1976—Subsecs. (a)(2), (b)(1), (3), (c)(2)(B). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

§ 993. Definitions

(a) Qualified export receipts

(1) General rule

For purposes of this part, except as provided by regulations under paragraph (2), the qualified export receipts of a corporation are—

(A) gross receipts from the sale, exchange, or other disposition of export property,

(B) gross receipts from the lease or rental of export property, which is used by the lessee of such property outside the United States,

(C) gross receipts for services which are related and subsidiary to any qualified sale, exchange, lease, rental, or other disposition of export property by such corporation,

(D) gross receipts from the sale, exchange, or other disposition of qualified export assets (other than export property),

(E) dividends (or amounts includible in gross income under section 951) with respect to stock of a related foreign export corporation (as defined in subsection (e)),

(F) interest on any obligation which is a qualified export asset,

(G) gross receipts for engineering or architectural services for construction projects located (or proposed for location) outside the United States, and

(H) gross receipts for the performance of managerial services in furtherance of the production of other qualified export receipts of a DISC.

(2) Excluded receipts

The Secretary may under regulations designate receipts from the sale, exchange, lease, rental, or other disposition of export property, and from services, as not being receipts described in paragraph (1) if he determines that such sale, exchange, lease, rental, or other disposition, or furnishing of services—

(A) is for ultimate use in the United States;

(B) is accomplished by a subsidy granted by the United States or any instrumentality thereof;

(C) is for use by the United States or any instrumentality thereof where the use of such export property or services is required by law or regulation.

For purposes of this part, the term ''qualified export receipts'' does not include receipts from a corporation which is a DISC for its taxable year in which the receipts arise and which is a member of a controlled group (as defined in paragraph (3)) which includes the recipient corporation.

(3) Definition of controlled group

For purposes of this part, the term ''controlled group'' has the meaning assigned to the term ''controlled group of corporations'' by section 1563(a), except that the phrase ''more than 50 percent'' shall be substituted for the phrase ''at least 80 percent'' each place it appears therein, and section 1563(b) shall not apply.

(b) Qualified export assets

For purposes of this part, the qualified export assets of a corporation are—

(1) export property (as defined in subsection (c));

(2) assets used primarily in connection with the sale, lease, rental, storage, handling, transportation, packaging, assembly, or servicing of export property, or the performance of engineering or architectural services described in subparagraph (G) of subsection (a)(1) or managerial services in furtherance of the production of qualified export receipts described in subparagraphs (A), (B), (C), and (G) of subsection (a)(1);

(3) accounts receivable and evidences of indebtedness which arise by reason of transactions of such corporation or of another corporation which is a DISC and which is a member of a controlled group which includes such corporation described in subparagraph (A), (B), (C), (D), (G), or (H), of subsection (a)(1);

(4) money, bank deposits, and other similar temporary investments, which are reasonably necessary to meet the working capital requirements of such corporation;

(5) obligations arising in connection with a producer's loan (as defined in subsection (d));

(6) stock or securities of a related foreign export corporation (as defined in subsection (e));

(7) obligations issued, guaranteed, or insured, in whole or in part, by the Export-Import Bank of the United States or the Foreign Credit Insurance Association in those cases where such obligations are acquired from such Bank or Association or from the seller or purchaser of the goods or services with respect to which such obligations arose;

(8) obligations issued by a domestic corporation organized solely for the purpose of financing sales of export property pursuant to an agreement with the Export-Import Bank of the United States under which such corporation makes export loans guaranteed by such bank; and

(9) amounts (other than reasonable working capital) on deposit in the United States that are utilized during the period provided for in, and otherwise in accordance with, regulations prescribed by the Secretary to acquire other qualified export assets.

(c) Export property

(1) In general

For purposes of this part, the term ''export property'' means property—

(A) manufactured, produced, grown, or extracted in the United States by a person other than a DISC,

(B) held primarily for sale, lease, or rental, in the ordinary course of trade or business, by, or to, a DISC, for direct use, consumption, or disposition outside the United States, and

(C) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States.

In applying subparagraph (C), the fair market value of any article imported into the United States shall be its appraised value as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation.

(2) Excluded property

For purposes of this part, the term ''export property'' does not include—

(A) property leased or rented by a DISC for use by any member of a controlled group (as defined in subsection (a)(3)) which includes the DISC,

(B) patents, inventions, models, designs, formulas, or processes, whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, for commercial or home use), goodwill, trademarks, trade brands, franchises, or other like property,

(C) products of a character with respect to which a deduction for depletion is allowable (including oil, gas, coal, or uranium products) under section 613 or 613A,

(D) products the export of which is prohibited or curtailed under section 7(a) of the Export Administration Act of 1979 to effectuate the policy set forth in paragraph (2)(C) of section 3 of such Act (relating to the protection of the domestic economy), or

(E) any unprocessed timber which is a softwood.

Subparagraph (C) shall not apply to any commodity or product at least 50 percent of the fair market value of which is attributable to manufacturing or processing, except that subparagraph (C) shall apply to any primary product from oil, gas, coal, or uranium. For purposes of the preceding sentence, the term ''processing'' does not include extracting or handling, packing, packaging, grading, storing, or transporting. For purposes of subparagraph (E), the term ''unprocessed timber'' means any log, cant, or similar form of timber.

(3) Property in short supply

If the President determines that the supply of any property described in paragraph (1) is insufficient to meet the requirements of the domestic economy, he may by Executive order designate the property as in short supply. Any property so designated shall be treated as property not described in paragraph (1) during the period beginning with the date specified in the Executive order and ending with the date specified in an Executive order setting forth the President's determination that the property is no longer in short supply.

(d) Producer's loans

(1) In general

An obligation, subject to the rules provided in paragraphs (2) and (3), shall be treated as arising out of a producer's loan if—

(A) the loan, when added to the unpaid balance of all other producer's loans made by the DISC, does not exceed the accumulated DISC income at the beginning of the month in which the loan is made;

(B) the obligation is evidenced by a note (or other evidence of indebtedness) with a stated maturity date not more than 5 years from the date of the loan;

(C) the loan is made to a person engaged in the United States in the manufacturing, production, growing, or extraction of export property determined without regard to subparagraph (C) or (D) of subsection (c)(2), (referred to hereinafter as the ''borrower''); and

(D) at the time of such loan it is designated as a producer's loan.

(2) Limitation

An obligation shall be treated as arising out of a producer's loan only to the extent that such loan, when added to the unpaid balance of all other producer's loans to the borrower outstanding at the time such loan is made, does

not exceed an amount determined by multiplying the sum of—

(A) the amount of the borrower's adjusted basis determined at the beginning of the borrower's taxable year in which the loan is made, in plant, machinery, and equipment, and supporting production facilities in the United States;

(B) the amount of the borrower's property held primarily for sale, lease, or rental, to customers in the ordinary course of trade or business, at the beginning of such taxable year; and

(C) the aggregate amount of the borrower's research and experimental expenditures (within the meaning of section 174) in the United States during all preceding taxable years beginning after December 31, 1971,

by the percentage which the borrower's receipts, during the 3 taxable years immediately preceding the taxable year (but not including any taxable year commencing prior to 1972) in which the loan is made, from the sale, lease, or rental outside the United States of property which would be export property (determined without regard to subparagraph (C) or (D) of subsection (c)(2)) if held by a DISC is of the gross receipts during such 3 taxable years from the sale, lease, or rental of property held by such borrower primarily for sale, lease, or rental to customers in the ordinary course of the trade or business of such borrower.

(3) Increased investment requirement

An obligation shall be treated as arising out of a producer's loan in a taxable year only to the extent that such loan, when added to the unpaid balance of all other producer's loans to the borrower made during such taxable year, does not exceed an amount equal to—

(A) the amount by which the sum of the adjusted basis of assets described in paragraph (2)(A) and (B) on the last day of the taxable year in which the loan is made exceeds the sum of the adjusted basis of such assets on the first day of such taxable year; plus

(B) the aggregate amount of the borrower's research and experimental expenditures (within the meaning of section 174) in the United States during such taxable year.

(4) Special limitation in the case of domestic film maker

(A) In general

In the case of a borrower who is a domestic film maker and who incurs an obligation to a DISC for the making of a film, and such DISC is engaged in the trade or business of selling, leasing, or renting films which are export property, the limitation described in paragraph (2) may be determined (to the extent provided under regulations prescribed by the Secretary) on the basis of—

(i) the sum of the amounts described in subparagraphs (A), (B), and (C) thereof plus reasonable estimates of all such amounts to be incurred at any time by the borrower with respect to films which are commenced within the taxable year in which the loan is made, and

(ii) the percentage which, based on the experience of producers of similar films, the annual receipts of such producers from the sale, lease, or rental of such films outside the United States is of the annual gross receipts of such producers from the sale, lease, or rental of such films.

(B) Domestic film maker

For purposes of this paragraph, a borrower is a domestic film maker with respect to a film if—

(i) such borrower is a United States person within the meaning of section 7701(a)(30), except that with respect to a partnership, all of the partners must be United States persons, and with respect to a corporation, all of its officers and at least a majority of its directors must be United States persons;

(ii) such borrower is engaged in the trade or business of making the film with respect to which the loan is made;

(iii) the studio, if any, used or to be used for the taking of photographs and the recording of sound incorporated into such film is located in the United States;

(iv) the aggregate playing time of portions of such film photographed outside the United States does not or will not exceed 20 percent of the playing time of such film; and

(v) not less than 80 percent of the total amount paid or to be paid for services performed in the making of such film is paid or to be paid to persons who are United States persons at the time such services are performed or consists of amounts which are fully taxable by the United States.

(C) Special rules for application of subparagraph (B)(v)

For purposes of clause (v) of subparagraph (B)—

(i) there shall not be taken into account any amount which is contingent upon receipts or profits of the film and which is fully taxable by the United States (within the meaning of clause (ii)); and

(ii) any amount paid or to be paid to a United States person, to a non-resident alien individual, or to a corporation which furnishes the services of an officer or employee to the borrower with respect to the making of a film, shall be treated as fully taxable by the United States only if the total amount received by such person, individual, officer, or employee for services performed in the making of such film is fully included in gross income for purposes of this chapter.

(e) Related foreign export corporation

In determining whether a corporation (hereinafter in this subsection referred to as ''the domestic corporation'') is a DISC—

(1) Foreign international sales corporation

A foreign corporation is a related foreign export corporation if—

(A) stock possessing more than 50 percent of the total combined voting power of all

classes of stock entitled to vote is owned directly by the domestic corporation,

(B) 95 percent or more of such foreign corporation's gross receipts for its taxable year ending with or within the taxable year of the domestic corporation consists of qualified export receipts described in subparagraphs (A), (B), (C), and (D) of subsection (a)(1) and interest on any obligation described in paragraphs (3) and (4) of subsection (b), and

(C) the adjusted basis of the qualified export assets (described in paragraphs (1), (2), (3), and (4) of subsection (b)) held by such foreign corporation at the close of such taxable year equals or exceeds 95 percent of the sum of the adjusted basis of all assets held by it at the close of such taxable year.

(2) Real property holding company

A foreign corporation is a related foreign export corporation if—

(A) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned directly by the domestic corporation, and

(B) its exclusive function is to hold real property for the exclusive use (under a lease or otherwise) of the domestic corporation.

(3) Associated foreign corporation

A foreign corporation is a related foreign export corporation if—

(A) less than 10 percent of the total combined voting power of all classes of stock entitled to vote of such foreign corporation is owned (within the meaning of section 1563 (d) and (e)) by the domestic corporation or by a controlled group of corporations (within the meaning of section 1563) of which the domestic corporation is a member, and

(B) the ownership of stock or securities in such foreign corporation by the domestic corporation is determined (under regulations prescribed by the Secretary) to be reasonably in furtherance of a transaction or transactions giving rise to qualified export receipts of the domestic corporation.

(f) Gross receipts

For purposes of this part, the term ''gross receipts'' means the total receipts from the sale, lease, or rental of property held primarily for sale, lease, or rental in the ordinary course of trade or business, and gross income from all other sources. In the case of commissions on the sale, lease, or rental of property, the amount taken into account for purposes of this part as gross receipts shall be the gross receipts on the sale, lease, or rental of the property on which such commissions arose.

(g) United States defined

For purposes of this part, the term ''United States'' includes the Commonwealth of Puerto Rico and the possessions of the United States.

(Added Pub. L. 92–178, title V, §501, Dec. 10, 1971, 85 Stat. 538; amended Pub. L. 93–482, §3(a), Oct. 26, 1974, 88 Stat. 1456; Pub. L. 94–12, title VI, §603(a), Mar. 29, 1975, 89 Stat. 64; Pub. L. 94–455, title XI, §1101(b), (c), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1658, 1834; Pub. L. 96–39, title II, §202(c)(2), July 26, 1979, 93 Stat. 202; Pub. L. 96–72, §22(c), Sept. 29, 1979, 93 Stat. 535; Pub. L. 98–369, div. A, title VIII, §802(c)(2), July 18, 1984, 98 Stat. 999; Pub. L. 103–66, title XIII, §13239(b), Aug. 10, 1993, 107 Stat. 509.)

REFERENCES IN TEXT

Sections 3(2)(C) and 7(a) of the Export Administration Act of 1979, referred to in subsec. (c)(2)(D), are classified, respectively, to sections 2402(2)(C) and 2406(a) of the Appendix to Title 50, War and National Defense.

AMENDMENTS

1993—Subsec. (c)(2). Pub. L. 103–66, §13239(b)(2), inserted at end ''For purposes of subparagraph (E), the term 'unprocessed timber' means any log, cant, or similar form of timber.''

Subsec. (c)(2)(E). Pub. L. 103–66, §13239(b)(1), added subpar. (E).

1984—Subsec. (a)(3). Pub. L. 98–369 substituted ''the term 'controlled group of corporations' by'' for ''such term by''.

1979—Subsec. (c)(1). Pub. L. 96–39 substituted ''of the Tariff Act of 1930 (19 U.S.C. 1401a)'' for ''402a of the Tariff Act of 1930 (19 U.S.C., sec. 1401a or 1402)''.

Subsec. (c)(2)(D). Pub. L. 96–72 substituted ''7(a) of the Export Administration Act of 1979'' for ''4(b) of the Export Administration Act of 1969 (50 U.S.C. App. 2403(b))'' and ''paragraph (2)(C)'' for ''paragraph (2)(A)''.

1976—Subsecs. (a)(2), (b)(9). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c). Pub. L. 94–455, §§1101(b), 1906(b)(13)(A), in par. (1) in provisions following subpar. (C), struck out ''or his delegate'' after ''Secretary'', in par. (2)(B) ''or'' after ''like property'', and in par. (2)(C), substituted ''under section 613 or 613A'' for ''under section 611'' after ''uranium products)''.

Subsec. (d)(1)(C). Pub. L. 94–455, §1101(c)(1), inserted ''determined without regard to subparagraph (C) or (D) of subsection (c)(2)'' after ''export property''.

Subsec. (d)(2). Pub. L. 94–455, §1101(c)(2), inserted ''(determined without regard to subparagraph (C) or (D) of subsection (c)(2))'' after ''would be export property''.

Subsecs. (d)(4)(A), (e)(3)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

1975—Subsec. (c)(2). Pub. L. 94–12 added subpars. (C) and (D) and provisions following subpar. (D).

1974—Subsec. (b)(3). Pub. L. 93–482 inserted ''or of another corporation which is a DISC and which is a member of a controlled group which includes such corporation'' after ''such corporation''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to sales, exchanges, or other dispositions after Aug. 10, 1993, see section 13239(e) of Pub. L. 103–66, set out as a note under section 865 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1979 AMENDMENTS

Amendment by Pub. L. 96–72 effective upon the expiration of the Export Administration Act of 1969, which terminated on Sept. 30, 1979, or upon any prior date which the Congress by concurrent resolution or the President by proclamation designated, see References in Text note set out under section 2418 of Appendix to Title 50, War and National Defense.

Amendment by Pub. L. 96–39 effective Jan. 1, 1981, with provision for an earlier effective date under certain circumstances, see section 204 of Pub. L. 96–39, set out as a note under section 1401a of Title 19, Customs Duties.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1101(g)(2) of Pub. L. 94–455 provided that: ''The amendments made by subsection (b) [amending this section] shall apply to sales, exchanges, and other dispositions made after March 18, 1975, in taxable years ending after such date.''

Section 1101(g)(3) of Pub. L. 94–455 provided that: ''The amendments made by subsections (c) and (f) [amending this section] shall apply to taxable years ending after March 18, 1975.''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 603(b) of Pub. L. 94–12, as amended by section 1101(f) of Pub. L. 94–455; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall apply to sales, exchanges, and other dispositions made after March 18, 1975, in taxable years ending after such date.

''(2) BINDING CONTRACT.—The amendments made by subsection (a) [amending this section] shall not apply to sales, exchanges, and other dispositions made after March 18, 1975, but before March 19, 1980, if such sales, exchanges, and other dispositions are made pursuant to a fixed contract. The term 'fixed contract' means a contract which was, on March 18, 1975, and is at all times thereafter binding on the DISC or a taxpayer which was a member of the same controlled group (within the meaning of section 993(a)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) as the DISC, which was entered into after the date on which the DISC qualified as a DISC and the DISC and the taxpayer became members of the same controlled group, and under which the price and quantity of the products sold, exchanged, or otherwise disposed of cannot be increased.''

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3(b) of Pub. L. 93–482 provided that: ''The amendment made by subsection (a) [amending this section] applies to taxable years beginning after December 31, 1973. The amendment shall, at the election of the taxpayer made within 90 days after the date of enactment of this Act [Oct. 26, 1974], also apply to any taxable year beginning after December 31, 1971, and before January 1, 1974.''

§ 994. Inter-company pricing rules

(a) In general

In the case of a sale of export property to a DISC by a person described in section 482, the taxable income of such DISC and such person shall be based upon a transfer price which would allow such DISC to derive taxable income attributable to such sale (regardless of the sales price actually charged) in an amount which does not exceed the greatest of—

(1) 4 percent of the qualified export receipts on the sale of such property by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts,

(2) 50 percent of the combined taxable income of such DISC and such person which is attributable to the qualified export receipts on such property derived as the result of a sale by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts, or

(3) taxable income based upon the sale price actually charged (but subject to the rules provided in section 482).

(b) Rules for commissions, rentals, and marginal costing

The Secretary shall prescribe regulations setting forth—

(1) rules which are consistent with the rules set forth in subsection (a) for the application of this section in the case of commissions, rentals, and other income, and

(2) rules for the allocation of expenditures in computing combined taxable income under subsection (a)(2) in those cases where a DISC is seeking to establish or maintain a market for export property.

(c) Export promotion expenses

For purposes of this section, the term ''export promotion expenses'' means those expenses incurred to advance the distribution or sale of export property for use, consumption, or distribution outside of the United States, but does not include income taxes. Such expenses shall also include freight expenses to the extent of 50 percent of the cost of shipping export property aboard airplanes owned and operated by United States persons or ships documented under the laws of the United States in those cases where law or regulations does not require that such property be shipped aboard such airplanes or ships.

(Added Pub. L. 92–178, title V, § 501, Dec. 10, 1971, 85 Stat. 543; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

SUBPART B—TREATMENT OF DISTRIBUTIONS TO SHAREHOLDERS

Sec.
995. Taxation of DISC income to shareholders.
996. Rules for allocation in the case of distributions and losses.
997. Special subchapter C rules.

§ 995. Taxation of DISC income to shareholders

(a) General rule

A shareholder of a DISC or former DISC shall be subject to taxation on the earnings and profits of a DISC as provided in this chapter, but subject to the modifications of this subpart.

(b) Deemed distributions

(1) Distributions in qualified years

A shareholder of a DISC shall be treated as having received a distribution taxable as a dividend with respect to his stock in an amount which is equal to his pro rata share of the sum (or, if smaller, the earnings and profits for the taxable year) of—

(A) the gross interest derived during the taxable year from producer's loans,

(B) the gain recognized by the DISC during the taxable year on the sale or exchange of property, other than property which in the hands of the DISC is a qualified export asset, previously transferred to it in a transaction in which gain was not recognized in whole or in part, but only to the extent that the transferor's gain on the previous transfer was not recognized,

(C) the gain (other than the gain described in subparagraph (B)) recognized by the DISC during the taxable year on the sale or exchange of property (other than property

which in the hands of the DISC is stock in trade or other property described in section 1221(a)(1)) previously transferred to it in a transaction in which gain was not recognized in whole or in part, but only to the extent that the transferor's gain on the previous transfer was not recognized and would have been treated as ordinary income if the property has been sold or exchanged rather than transferred to the DISC,

(D) 50 percent of the taxable income of the DISC for the taxable year attributable to military property,

(E) the taxable income of the DISC attributable to qualified export receipts of the DISC for the taxable year which exceed $10,000,000,

(F) the sum of—

(i) in the case of a shareholder which is a C corporation, one-seventeenth of the excess of the taxable income of the DISC for the taxable year, before reduction for any distributions during the year, over the sum of the amounts deemed distributed for the taxable year under subparagraphs (A), (B), (C), (D), and (E),

(ii) an amount equal to 16/17 of the excess referred to in clause (i), multiplied by the international boycott factor determined under section 999, and

(iii) any illegal bribe, kickback, or other payment (within the meaning of section 162(c)) paid by or on behalf of the DISC directly or indirectly to an official, employee, or agent in fact of a government, and

(G) the amount of foreign investment attributable to producer's loans (as defined in subsection (d)) of a DISC for the taxable year.

Distributions described in this paragraph shall be deemed to be received on the last day of the taxable year of the DISC in which the income was derived. In the case of a distribution described in subparagraph (G), earnings and profits for the taxable year shall include accumulated earnings and profits.

(2) Distributions upon disqualification

(A) A shareholder of a corporation which revoked its election to be treated as a DISC or failed to satisfy the conditions of section 992(a)(1) for a taxable year shall be deemed to have received (at the time specified in subparagraph (B)) a distribution taxable as a dividend equal to his pro rata share of the DISC income of such corporation accumulated during the immediately preceding consecutive taxable years for which the corporation was a DISC.

(B) Distributions described in subparagraph (A) shall be deemed to be received in equal installments on the last day of each of the 10 taxable years of the corporation following the year of the termination or disqualification described in subparagraph (A) (but in no case over more than twice the number immediately preceding consecutive taxable years during which the corporation was a DISC).

(3) Taxable income attributable to military property

(A) In general

For purposes of paragraph (1)(D), taxable income of a DISC for the taxable year attributable to military property shall be determined by only taking into account—

(i) the gross income of the DISC for the taxable year which is attributable to military property, and

(ii) the deductions which are properly apportioned or allocated to such income.

(B) Military property

For purposes of subparagraph (A), the term ''military property'' means any property which is an arm, ammunition, or implement of war designated in the munitions list published pursuant to section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(4) Aggregation of qualified export receipts

(A) In general

For purposes of applying paragraph (1)(E), all DISC's which are members of the same controlled group shall be treated as a single corporation.

(B) Allocation

The dollar amount under paragraph (1)(E) shall be allocated among the DISC's which are members of the same controlled group in a manner provided in regulations prescribed by the Secretary.

(c) Gain on disposition of stock in a DISC

(1) In general

If—

(A) a shareholder disposes of stock in a DISC or former DISC any gain recognized on such disposition shall be included in gross income as a dividend to the extent provided in paragraph (2), or

(B) stock of a DISC or former DISC is disposed of in a transaction in which the separate corporate existence of the DISC or former DISC is terminated other than by a mere change in place of organization, however effected, any gain realized on the disposition of such stock in the transaction shall be recognized notwithstanding any other provision of this title to the extent provided in paragraph (2) and to the extent so recognized shall be included in gross income as a dividend.

(2) Amount included

The amounts described in paragraph (1) shall be included in gross income as a dividend to the extent of the accumulated DISC income of the DISC or former DISC which is attributable to the stock disposed of and which was accumulated in taxable years of such corporation during the period or periods the stock disposed of was held by the shareholder which disposed of such stock.

(d) Foreign investment attributable to DISC earnings

For the purposes of this part—

(1) In general

The amount of foreign investment attributable to producer's loans of a DISC for a taxable year shall be the smallest of—

(A) the net increase in foreign assets by members of the controlled group (as defined in section 993(a)(3)) which includes the DISC,

(B) the actual foreign investment by domestic members of such group, or

(C) the amount of outstanding producer's loans by such DISC to members of such controlled group.

(2) Net increase in foreign assets

The term ''net increase in foreign assets'' of a controlled group means the excess of—

(A) the amount incurred by such group to acquire assets (described in section 1231(b)) located outside the United States over,

(B) the sum of—

(i) the depreciation with respect to assets of such group located outside the United States;

(ii) the outstanding amount of stock or debt obligations of such group issued after December 31, 1971, to persons other than the United States persons or any member of such group;

(iii) one-half the earnings and profits of foreign members of such group and foreign branches of domestic members of such group;

(iv) one-half the royalties and fees paid by foreign members of such group to domestic members of such group; and

(v) the uncommitted transitional funds of the group as determined under paragraph (4).

For purposes of this paragraph, assets which are qualified export assets of a DISC (or would be qualified export assets if owned by a DISC) shall not be taken into account. Amounts described in this paragraph (other than in subparagraphs (B)(ii) and (v)) shall be taken into account only to the extent they are attributable to taxable years beginning after December 31, 1971.

(3) Actual foreign investment

The term ''actual foreign investment'' by domestic members of a controlled group means the sum of—

(A) contributions to capital of foreign members of the group by domestic members of the group after December 31, 1971,

(B) the outstanding amount of stock or debt obligations of foreign members of such group (other than normal trade indebtedness) issued after December 31, 1971, to domestic members of such group,

(C) amounts transferred by domestic members of the group after the December 31, 1971, to foreign branches of such members, and

(D) one-half the earnings and profits of foreign members of such group and foreign branches of domestic members of such group for taxable years beginning after December 31, 1971.

As used in this subsection, the term ''domestic member'' means a domestic corporation which is a member of a controlled group (as defined in section 993(a)(3)), and the term ''foreign member'' means a foreign corporation which is a member of such a controlled group.

(4) Uncommitted transitional funds

The uncommitted transitional funds of the group shall be an amount equal to the sum of—

(A) the excess of—

(i) the amount of stock or debt obligations of domestic members of such group outstanding on December 31, 1971, and issued on or after January 1, 1968, to persons other than United States persons or any members of such group, but only to the extent the taxpayer establishes that such amount constitutes a long-term borrowing for purposes of the foreign direct investment program, over

(ii) the net amount of actual foreign investment by domestic members of such group during the period that such stock or debt obligations have been outstanding; and

(B) the amount of liquid assets to the extent not included in subparagraph (A) held by foreign members of such group and foreign branches of domestic members of such group on October 31, 1971, in excess of their reasonable working capital needs on such date.

For purposes of this paragraph, the term ''liquid assets'' means money, bank deposits (not including time deposits), and indebtedness of 2 years or less to maturity on the date of acquisition; and the actual foreign investment shall be determined under paragraph (3) without regard to the date in subparagraph (A) of such paragraph and without regard to subparagraph (D) of such paragraph.

(5) Special rule

Under regulations prescribed by the Secretary the determinations under this subsection shall be made on a cumulative basis with proper adjustments for amounts previously taken into account.

(e) Certain transfers of DISC assets

If—

(1) a corporation owns, directly or indirectly, all of the stock of a subsidiary and a DISC,

(2) the subsidiary has been engaged in the active conduct of a trade or business (within the meaning of section 355(b)) throughout the 5–year period ending on the date of the transfer and continues to be so engaged thereafter, and

(3) during the taxable year of the subsidiary in which its stock is transferred and its preceding taxable year, such trade or business gives rise to qualified export receipts of the subsidiary and the DISC,

then, under such terms and conditions as the Secretary by regulations shall prescribe, transfers of assets, stock, or both, will be deemed to be a reorganization within the meaning of section 368, a transaction to which section 355 applies, an exchange of stock to which section 351 applies, or a combination thereof. The preceding sentence shall apply only to the extent that the transfer or transfers involved are for the purpose of preventing the separation of the owner-

ship of the stock in the DISC from the ownership of the trade or business which (during the base period) produced the export gross receipts of the DISC.

(f) Interest on DISC-related deferred tax liability

(1) In general

A shareholder of a DISC shall pay for each taxable year interest in an amount equal to the product of—

(A) the shareholder's DISC-related deferred tax liability for such year, and

(B) the base period T-bill rate.

(2) Shareholder's DISC-related deferred tax liability

For purposes of this subsection—

(A) In general

The term ''shareholder's DISC-related deferred tax liability'' means, with respect to any taxable year of a shareholder of a DISC, the excess of—

(i) the amount which would be the tax liability of the shareholder for the taxable year if the deferred DISC income of such shareholder for such taxable year were included in gross income as ordinary income, over

(ii) the actual amount of the tax liability of such shareholder for such taxable year.

Determinations under the preceding sentence shall be made without regard to carrybacks to such taxable year.

(B) Adjustments for losses, credits, and other items

The Secretary shall prescribe regulations which provide such adjustments—

(i) to the accounts of the DISC, and

(ii) to the amount of any carryover or carryback of the shareholder,

as may be necessary or appropriate in the case of net operating losses, credits, and carryovers, and carrybacks of losses and credits.

(C) Tax liability

The term ''tax liability'' means the amount of the tax imposed by this chapter for the taxable year reduced by credits allowable against such tax (other than credits allowable under sections 31, 32, and 34).

(3) Deferred DISC income

For purposes of this subsection—

(A) In general

The term ''deferred DISC income'' means, with respect to any taxable year of a shareholder, the excess of—

(i) the shareholder's pro rata share of accumulated DISC income (for periods after 1984) of the DISC as of the close of the computation year, over

(ii) the amount of the distributions-in-excess-of-income for the taxable year of the DISC following the computation year.

(B) Computation year

For purposes of applying subparagraph (A) with respect to any taxable year of a shareholder, the computation year is the taxable year of the DISC which ends with (or within) the taxable year of the shareholder which precedes the taxable year of the shareholder for which the amount of deferred DISC income is being determined.

(C) Distributions-in-excess-of-income

For purposes of subparagraph (A), the term ''distributions-in-excess-of-income'' means, with respect to any taxable year of a DISC, the excess (if any) of—

(i) the amount of actual distributions to the shareholder out of accumulated DISC income, over

(ii) the shareholder's pro rata share of the DISC income for such taxable year.

(4) Base period T-bill rate

For purposes of this subsection, the term ''base period T-bill rate'' means the annual rate of interest determined by the Secretary to be equivalent to the average of the 1-year constant maturity Treasury yields, as published by the Board of Governors of the Federal Reserve System, for the 1-year period ending on September 30 of the calendar year ending with (or of the most recent calendar year ending before) the close of the taxable year of the shareholder.

(5) Short years

The Secretary shall prescribe such regulations as may be necessary for the application of this subsection to short years of the DISC, the shareholder, or both.

(6) Payment and assessment and collection of interest

The interest accrued during any taxable year which a shareholder is required to pay under paragraph (1) shall be treated, for purposes of this title, as interest payable under section 6601 and shall be paid by the shareholder at the time the tax imposed by this chapter for such taxable year is required to be paid.

(7) DISC includes former DISC

For purposes of this subsection, the term ''DISC'' includes a former DISC.

(g) Treatment of tax-exempt shareholders

If any organization described in subsection (a)(2) or (b)(2) of section 511 (or any other person otherwise subject to tax under section 511) is a shareholder in a DISC—

(1) any amount deemed distributed to such shareholder under subsection (b),

(2) any actual distribution to such shareholder which under section 996 is treated as out of accumulated DISC income, and

(3) any gain which is treated as a dividend under subsection (c),

shall be treated as derived from the conduct of an unrelated trade or business (and the modifications of section 512(b) shall not apply). The rules of the preceding sentence shall apply also for purposes of determining any such shareholder's DISC-related deferred tax liability under subsection (f).

(Added Pub. L. 92–178, title V, §501, Dec. 10, 1971, 85 Stat. 544; amended Pub. L. 94–455, title X,

§§ 1063, 1065(a)(2), title XI, § 1101(a), (d)(1), title XIX, §§ 1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1650, 1654, 1655, 1658, 1793, 1834; Pub. L. 95–600, title VII, §§ 701(u)(12)(B), 703(i)(1), (2), Nov. 6, 1978, 92 Stat. 2918, 2940; Pub. L. 98–369, div. A, title I, § 68(d), title VIII, § 802(a), (b), July 18, 1984, 98 Stat. 588, 997, 999; Pub. L. 99–514, title XVIII, § 1876(b)(2), (g), (p)(1), Oct. 22, 1986, 100 Stat. 2898, 2900, 2902; Pub. L. 100–647, title I, §§ 1006(e)(15), 1012(bb)(6)(A), Nov. 10, 1988, 102 Stat. 3402, 3535; Pub. L. 101–239, title VII, § 7811(i)(12), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 106–170, title V, § 532(c)(2)(R), Dec. 17, 1999, 113 Stat. 1931; Pub. L. 106–554, § 1(a)(7) [title III, §§ 307(c), 319(12)], Dec. 21, 2000, 114 Stat. 2763, 2763A–636, 2763A–646; Pub. L. 107–147, title IV, § 417(15), Mar. 9, 2002, 116 Stat. 56.)

AMENDMENTS

2002—Subsec. (b)(3)(B). Pub. L. 107–147 substituted ''Arms Export Control Act'' for ''International Security Assistance and Arms Export Control Act of 1976''.

2000—Subsec. (b)(3)(B). Pub. L. 106–554, § 1(a)(7) [title III, § 319(12)], substituted ''section 38 of the International Security Assistance and Arms Export Control Act of 1976 (22 U.S.C. 2778)'' for ''the Military Security Act of 1954 (22 U.S.C. 1934)''.

Subsec. (f)(4). Pub. L. 106–554, § 1(a)(7) [title III, § 307(c)], substituted ''the average of the 1-year constant maturity Treasury yields, as published by the Board of Governors of the Federal Reserve System, for the 1-year period'' for ''the average investment yield of United States Treasury bills with maturities of 52 weeks which were auctioned during the 1-year period''.

1999—Subsec. (b)(1)(C). Pub. L. 106–170 substituted ''1221(a)(1)'' for ''1221(1)''.

1989—Subsec. (g). Pub. L. 101–239 substituted ''section 511 (or any other person otherwise subject to tax under section 511)'' for ''section 511'' in introductory provisions.

1988—Subsec. (c)(1). Pub. L. 100–647, § 1006(e)(15), struck out subpar. (C) and last sentence which read as follows:

> ''(C) a shareholder distributes, sells, or exchanges stock in a DISC or former DISC in a transaction to which section 311, 336, or 337 applies, then an amount equal to the excess of the fair market value of such stock over its adjusted basis in the hands of the shareholder shall, notwithstanding any provision of this title, be included in gross income of the shareholder as a dividend to the extent provided in paragraph (2).

Subparagraph (C) shall not apply if the person receiving the stock in the disposition has a holding period for the stock which includes the period for which the stock was held by the shareholder disposing of such stock.''

Subsec. (g). Pub. L. 100–647, § 1012(bb)(6)(A), added subsec. (g).

1986—Subsec. (b)(1)(F)(i). Pub. L. 99–514, § 1876(b)(2)(A), inserted ''in the case of a shareholder which is a C corporation,''.

Subsec. (b)(1)(F)(ii). Pub. L. 99–514, § 1876(b)(2)(B), substituted ''16/17 of the excess referred to in clause (i),'' for ''the amount determined under clause (i)''.

Subsec. (f)(4) to (6). Pub. L. 99–514, § 1876(p)(1), redesignated as pars. (4), (5), and (6), respectively, former par. (3) relating to base period T-bill rate, (4) relating to short years, and (5) relating to payment and assessment and collection of interest.

Subsec. (f)(7). Pub. L. 99–514, § 1876(g), added par. (7).

1984—Subsec. (b)(1)(E). Pub. L. 98–369, § 802(b)(1), substituted ''of the DISC attributable to qualified export receipts of the DISC for the taxable year which exceed $10,000,000'' for ''for the taxable year attributable to base period export gross receipts (as defined in subsection (e))''.

Subsec. (b)(1)(F)(i). Pub. L. 98–369, § 68(d), substituted ''one-seventeenth'' for ''one/half''.

Subsec. (b)(4). Pub. L. 98–369, § 802(b)(2), added par. (4).

Subsec. (e). Pub. L. 98–369, § 802(a)(1), (2), redesignated subsec. (g) as (e). Former subsec. (e), which related to definitions and special rules relating to computation of taxable income attributable to base period export gross receipts, was struck out.

Subsec. (f). Pub. L. 98–369, § 802(a)(1), (3), added subsec. (f). Former subsec. (f), which related to small DISCs, was struck out.

Subsec. (g). Pub. L. 98–369, § 802(a)(2), redesignated subsec. (g) as (e).

1978—Subsec. (b)(1). Pub. L. 95–600, § 703(i)(1), (2), substituted in subpar. (G) ''subsection (d)'' for ''subsection (D)'', and in provisions following subpar. (G) ''income'' for ''gross income (taxable income in the case of subparagraph (D))'' and ''subparagraph (G)'' for ''subparagraph (E)''.

Subsec. (c)(1). Pub. L. 95–600, § 701(u)(12)(B), inserted provision relating to application of subpar. (C).

1976—Subsec. (b)(1)(C). Pub. L. 94–455, § 1901(b)(3)(K), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231'' after ''treated as''.

Subsec. (b)(1)(D), (E). Pub. L. 94–455, § 1101(a)(1), added subpars. (D) and (E) and redesignated former subpars. (D) and (E) as (F) and (G), respectively.

Subsec. (b)(1)(F). Pub. L. 94–455, §§ 1063(a), 1065(a)(2), 1101(a)(1), redesignated former subpar. (D) as (F), made existing provision cl. (i), added cls. (ii) and (iii), and substituted ''(C), (D), and (E)'' for ''(C)'' after ''(B), and''.

Subsec. (b)(1)(G). Pub. L. 94–455, § 1101(a)(1), redesignated former subpar. (E) as (G).

Subsec. (b)(2)(B). Pub. L. 94–455, § 1101(a)(2), substituted ''more than twice the number'' for ''more than the number'' after ''no case over''.

Subsec. (b)(3). Pub. L. 94–455, § 1101(a)(3), added par. (3).

Subsec. (c). Pub. L. 94–455, § 1101(d)(1), redesignated existing provisions as pars. (1) and (2) and, as redesignated, added subpar. (1)(C).

Subsec. (d)(5). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsecs. (e) to (g). Pub. L. 94–455, § 1101(a)(4), added subsecs. (e) to (g).

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1012(bb)(6)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1987.''

Amendment by section 1006(e)(15) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 68(d) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 68(e)(1) of Pub. L. 98–369, set out as a note under section 291 of this title.

Amendment by section 802(a), (b) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(u)(12)(C) of Pub. L. 95–600 provided that: ''The amendment made by subparagraph (B) [amending this section] shall apply to dispositions made after December 31, 1976, in taxable years ending after such date.''

Amendment by section 703(i)(1), (2) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1063(a) of Pub. L. 94–455 applicable to participation in or cooperation with an international boycott more than 30 days after Oct. 4, 1976, with special provisions for existing contracts, see section 1066(a) of Pub. L. 94–455, set out as a note under section 908 of this title.

Amendment by section 1065(a)(2) of Pub. L. 94–455 applicable to payments described in section 162(c) of this title made more than 30 days after Oct. 4, 1976, see section 1066(b) of Pub. L. 94–455, set out as a note under section 952 of this title.

Section 1101(g)(1) of Pub. L. 94–455 provided that: ''The amendments made by subsections (a) and (e) [amending this section and section 996 of this title] shall apply to taxable years beginning after December 31, 1975.''

Section 1101(g)(4) of Pub. L. 94–455, as amended by Pub. L. 95–600, title VII, § 701(u)(12)(A), Nov. 6, 1978, 92 Stat. 2918, provided that: ''The amendments made by subsection (d) [amending this section and section 751 of this title] shall apply to sales, exchanges, or other dispositions after December 31, 1976, in taxable years ending after such date.''

Amendment by section 1901(b)(3)(K) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

PRORATION OF BASE PERIOD IN CASE OF FIXED CONTRACTS

Section 1101(g)(5) of Pub. L. 94–455, as amended by Pub. L. 95–600, title VII, § 703(i)(4), Nov. 6, 1978, 92 Stat. 2940; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of determining adjusted base period export gross receipts (under section 995(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by this section), if any DISC has export gross receipts from export property by reason of paragraph (2) of section 603(b) of the Tax Reduction Act of 1975, [set out as an Effective Date of 1975 Amendment note under section 993 of this title], then the export gross receipts of such DISC for the taxable years of the base period shall be increased by an amount equal to the amount of gross receipts which were excluded from export gross receipts during each taxable year of the base period by reason of the last sentence of section 995(e)(3) of such Code multiplied by a fraction, the numerator of which is the amount of the gross receipts in the taxable year which are export gross receipts by reason of paragraph (2) of section 603(b) of the Tax Reduction Act of 1975 and the denominator of which is the amount of total gross receipts which are excluded from export gross receipts in the taxable year by reason of subparagraph (C) or (D) of paragraph (2) of section 993(c) (determined without regard to paragraph (2) of section 603(b) of the Tax Reduction Act of 1975).''

§ 996. Rules for allocation in the case of distributions and losses

(a) Rules for actual distributions and certain deemed distributions

(1) In general

Any actual distribution (other than a distribution described in paragraph (2) or to which section 995(c) applies) to a shareholder by a DISC (or former DISC) which is made out of earnings and profits shall be treated as made—

(A) first, out of previously taxed income, to the extent thereof,

(B) second, out of accumulated DISC income, to the extent thereof, and

(C) finally, out of other earnings and profits.

(2) Qualifying distributions

Any actual distribution made pursuant to section 992(c) (relating to distributions to meet qualification requirements), and any deemed distribution pursuant to section 995(b)(1)(G) (relating to foreign investment attributable to producer's loans), shall be treated as made—

(A) first, out of accumulated DISC income, to the extent thereof,

(B) second, out of the earnings and profits described in paragraph (1)(C), to the extent thereof, and

(C) finally, out of previously taxed income.

In the case of any amount of any actual distribution to a C corporation made pursuant to section 992(c) which is required to satisfy the condition of section 992(a)(1)(A), the preceding sentence shall apply to 16/17ths of such amount and paragraph (1) shall apply to the remaining 1/17th of such amount.

(3) Exclusion from gross income

Amounts distributed out of previously taxed income shall be excluded by the distributee from gross income except for gains described in subsection (e)(2), and shall reduce the amount of the previously taxed income.

(b) Ordering rules for losses

If for any taxable year a DISC, or a former DISC, incurs a deficit in earnings and profits, such deficit shall be chargeable—

(1) first, to earnings and profits described in subsection (a)(1)(C), to the extent thereof,

(2) second, to accumulated DISC income, to the extent thereof, and

(3) finally, to previously taxed income, except that a deficit in earnings and profits shall not be applied against accumulated DISC income which has been determined is to be deemed distributed to the shareholders (pursu-

ant to section 995(b)(2)(A)) as a result of a revocation of election or other disqualification.

(c) Priority of distributions

Any actual distribution made during a taxable year shall be treated as being made subsequent to any deemed distribution made during such year. Any actual distribution made pursuant to section 992(c) (relating to distributions to meet qualification requirements) shall be treated as being made before any other actual distributions during the taxable year.

(d) Subsequent effect of previous disposition of DISC stock

(1) Shareholder previously taxed income adjustment

If—

(A) gain with respect to a share of stock of a DISC or former DISC is treated under section 995(c) as a dividend or as ordinary income, and

(B) any person subsequently receives an actual distribution made out of accumulated DISC income, or a deemed distribution made pursuant to section 995(b)(2), with respect to such share,

such person shall treat such distribution in the same manner as a distribution from previously taxed income to the extent that (i) the gain referred to in subparagraph (A), exceeds (ii) any other amounts with respect to such share which were treated under this paragraph as made from previously taxed income. In applying this paragraph with respect to a share of stock in a DISC or former DISC, gain on the acquisition of such share by the DISC or former DISC or gain on a transaction prior to such acquisition shall not be considered gain referred to in subparagraph (A).

(2) Corporate adjustment upon redemption

If section 995(c) applies to a redemption of stock in a DISC or former DISC, the accumulated DISC income shall be reduced by an amount equal to the gain described in section 995(c) with respect to such stock which is (or has been) treated as ordinary income, except to the extent distributions with respect to such stock have been treated under paragraph (1).

(e) Adjustment to basis

(1) Additions to basis

Amounts representing deemed distributions as provided in section 995(b) shall increase the basis of the stock with respect to which the distribution is made.

(2) Reductions of basis

The portion of an actual distribution made out of previously taxed income shall reduce the basis of the stock with respect to which it is made, and to the extent that it exceeds the adjusted basis of such stock, shall be treated as gain from the sale or exchange of property. In the case of stock includible in the gross estate of a decedent for which an election is made under section 2032 (relating to alternate valuation), this paragraph shall not apply to any distribution made after the date of the decedent's death and before the alternate valuation date provided by section 2032.

(f) Definition of divisions of earnings and profits

For purposes of this part:

(1) DISC income

The earnings and profits derived by a corporation during a taxable year in which such corporation is a DISC, before reduction for any distributions during the year, but reduced by amounts deemed distributed under section 995(b)(1), shall constitute the DISC income for such year. The earnings and profits of a DISC for a taxable year include any amounts includible in such DISC's gross income pursuant to section 951(a) for such year. Accumulated DISC income shall be reduced by deemed distributions under section 995(b)(2).

(2) Previously taxed income

Earnings and profits deemed distributed under section 995(b) for a taxable year shall constitute previously taxed income for such year.

(3) Other earnings and profits

The earnings and profits for a taxable year which are described in neither paragraph (1) nor (2) shall constitute the other earnings and profits for such year.

(g) Effectively connected income

In the case of a shareholder who is a nonresident alien individual or a foreign corporation, trust, or estate, gains referred to in section 995(c) and all distributions out of accumulated DISC income including deemed distributions shall be treated as gains and distributions which are effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States and which are derived from sources within the United States.

(Added Pub. L. 92–178, title V, § 501 Dec. 10, 1971, 85 Stat. 547; amended Pub. L. 94–455, title XI, § 1101(e), title XIX, §§ 1901(b)(3)(I), Oct. 4, 1976, 90 Stat. 1659, 1793; Pub. L. 95–600, title VII, § 703(i)(3), Nov. 6, 1978, 92 Stat. 2940; Pub. L. 98–369, div. A, title VIII, § 801(d)(10), July 18, 1984, 98 Stat. 997; Pub. L. 99–514, title XVIII, § 1876(k), Oct. 22, 1986, 100 Stat. 2900.)

AMENDMENTS

1986—Subsec. (a)(2). Pub. L. 99–514 inserted last sentence and struck out former last sentence which read as follows: ''In the case of any amount of any actual distribution made pursuant to section 992(c) which is required to satisfy the condition of section 992(a)(1)(A), the preceding sentence shall apply to one-half of such amount, and paragraph (1) shall apply to the remaining one-half of such amount.''

1984—Subsec. (g). Pub. L. 98–369 inserted ''and which are derived from sources within the United States''.

1978—Subsec. (a)(2). Pub. L. 95–600 substituted ''section (b)(1)(G)'' for ''section (b)(1)(E)''.

1976—Subsec. (a)(2). Pub. L. 94–455, § 1101(e), inserted at end ''In the case of any amount of any actual distribution made pursuant to section 992(c) which is required to satisfy the condition of section 992(a)(1)(A), the preceding sentence shall apply to one-half of such amount, and paragraph (1) shall apply to the remaining one-half of such amount.''

Subsec. (d). Pub. L. 94–455, § 1901(b)(3)(I), substituted ''ordinary income'' for ''gain from the sale or exchange of property which is not a capital asset'' in par. (1)(A) after ''dividend or as'' and, in par. (2), after ''treated as''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to distributions on or after June 22, 1984, see section 805(a)(3) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1101(e) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, see section 1101(g)(1) of Pub. L. 94–455, set out as a note under section 905 of this title.

Amendment by section 1901(b)(3)(I) of Pub. L. 94–455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 997. Special subchapter C rules

For purposes of applying the provisions of subchapter C of chapter 1, any distribution in property to a corporation by a DISC or former DISC which is made out of previously taxed income or accumulated DISC income shall—

(1) be treated as a distribution in the same amount as if such distribution of property were made to an individual, and

(2) have a basis, in the hands of the recipient corporation, equal to the amount determined under paragraph (1).

(Added Pub. L. 92–178, title V, § 501, Dec. 10, 1971, 85 Stat. 549.)

PART V—INTERNATIONAL BOYCOTT DETERMINATIONS

Sec.
999. Reports by taxpayers; determinations.
[1000. Reserved.]

AMENDMENTS

1976—Pub. L. 94–455, title X, § 1064(a), Oct. 4, 1976, 90 Stat. 1650, added part heading and analysis of sections.

§ 999. Reports by taxpayers; determinations

(a) International boycott reports by taxpayers

(1) Report required

If any person, or a member of a controlled group (within the meaning of section 993(a)(3)) which includes that person, has operations in, or related to—

(A) a country (or with the government, a company, or a national of a country) which is on the list maintained by the Secretary under paragraph (3), or

(B) any other country (or with the government, a company, or a national of that country) in which such person or such member had operations during the taxable year if such person (or, if such person is a foreign corporation, any United States shareholder of that corporation) knows or has reason to know that participation in or co-operation with an international boycott is required as a condition of doing business within such country or with such government, company, or national,

that person or shareholder (within the meaning of section 951(b)) shall report such operations to the Secretary at such time and in such manner as the Secretary prescribes, except that in the case of a foreign corporation such report shall be required only of a United States shareholder (within the meaning of such section) of such corporation.

(2) Participation and cooperation; request therefor

A taxpayer shall report whether he, a foreign corporation of which he is a United States shareholder, or any member of a controlled group which includes the taxpayer or such foreign corporation has participated in or cooperated with an international boycott at any time during the taxable year, or has been requested to participate in or cooperate with such a boycott, and, if so, the nature of any operation in connection with which there was participation in or cooperation with such boycott (or there was a request to participate or cooperate).

(3) List to be maintained

The Secretary shall maintain and publish not less frequently than quarterly a current list of countries which require or may require participation in or cooperation with an international boycott (within the meaning of subsection (b)(3)).

(b) Participation in or cooperation with an international boycott

(1) General rule

If the person or a member of a controlled group (within the meaning of section 993(a)(3)) which includes the person participates in or cooperates with an international boycott in the taxable year, all operations of the taxpayer or such group in that country and in any other country which requires participation in or cooperation with the boycott as a condition of doing business within that country, or with the government, a company, or a national of that country, shall be treated as operations in connection with which such participation or cooperation occurred, except to the extent that the person can clearly demonstrate that a particular operation is a clearly separate and identifiable operation in connection with which there was no participation in or cooperation with an international boycott.

(2) Special rule

(A) Nonboycott operations

A clearly separate and identifiable operation of a person, or of a member of the con-

trolled group (within the meaning of section 993(a)(3)) which includes that person, in or related to any country within the group of countries referred to in paragraph (1) shall not be treated as an operation in or related to a group of countries associated in carrying out an international boycott if the person can clearly demonstrate that he, or that such member, did not participate in or cooperate with the international boycott in connection with that operation.

(B) Separate and identifiable operations

A taxpayer may show that different operations within the same country, or operations in different countries, are clearly separate and identifiable operations.

(3) Definition of boycott participation and cooperation

For purposes of this section, a person participates in or cooperates with an international boycott if he agrees—

(A) as a condition of doing business directly or indirectly within a country or with the government, a company, or a national of a country—

(i) to refrain from doing business with or in a country which is the object of the boycott or with the government, companies, or nationals of that country;

(ii) to refrain from doing business with any United States person engaged in trade in a country which is the object of the boycott or with the government, companies, or nationals of that country;

(iii) to refrain from doing business with any company whose ownership or management is made up, all or in part, of individuals of a particular nationality, race, or religion, or to remove (or refrain from selecting) corporate directors who are individuals of a particular nationality, race, or religion; or

(iv) to refrain from employing individuals of a particular nationality, race, or religion; or

(B) as a condition of the sale of a product to the government, a company, or a national of a country, to refrain from shipping or insuring that product on a carrier owned, leased, or operated by a person who does not participate in or cooperate with an international boycott (within the meaning of subparagraph (A)).

(4) Compliance with certain laws

This section shall not apply to any agreement by a person (or such member)—

(A) to meet requirements imposed by a foreign country with respect to an international boycott if United States law or regulations, or an Executive Order, sanctions participation in, or cooperation with, that international boycott,

(B) to comply with a prohibition on the importation of goods produced in whole or in part in any country which is the object of an international boycott, or

(C) to comply with a prohibition imposed by a country on the exportation of products obtained in such country to any country which is the object of an international boycott.

(c) International boycott factor

(1) International boycott factor

For purposes of sections 908(a), 952(a)(3), and 995(b)(1)(F)(ii), the international boycott factor is a fraction, determined under regulations prescribed by the Secretary, the numerator of which reflects the world-wide operations of a person (or, in the case of a controlled group (within the meaning of section 993(a)(3)) which includes that person, of the group) which are operations in or related to a group of countries associated in carrying out an international boycott in or with which that person or a member of that controlled group has participated or cooperated in the taxable year, and the denominator of which reflects the world-wide operations of that person or group.

(2) Specifically attributable taxes and income

If the taxpayer clearly demonstrates that the foreign taxes paid and income earned for the taxable year are attributable to specific operations, then, in lieu of applying the international boycott factor for such taxable year, the amount of the credit disallowed under section 908(a), the addition to subpart F income under section 952(a)(3), and the amount of deemed distribution under section 995(b)(1)(F)(ii) for the taxable year, if any, shall be the amount specifically attributable to the operations in which there was participation in or cooperation with an international boycott under section 999(b)(1).

(3) World-wide operations

For purposes of this subsection, the term ''world-wide operations'' means operations in or related to countries other than the United States.

(d) Determination with respect to particular operations

Upon a request made by the taxpayer, the Secretary shall issue a determination with respect to whether a particular operation of a person, or of a member of a controlled group which includes that person, constitutes participation in or cooperation with an international boycott. The Secretary may issue such a determination in advance of such operation in cases which are of such a nature that an advance determination is possible and appropriate under the circumstances. If the request is made before the operation is commenced, or before the end of a taxable year in which the operation is carried out, the Secretary may decline to issue such a determination before close of the taxable year.

(e) Participation or cooperation by related persons

If a person controls (within the meaning of section 304(c)) a corporation—

(1) participation in or cooperation with an international boycott by such corporation shall be presumed to be such participation or cooperation by such person, and

(2) participation in or cooperation with such a boycott by such person shall be presumed to be such participation or cooperation by such corporation.

(f) Willful failure to report

Any person (within the meaning of section 6671(b)) required to report under this section who willfully fails to make such report shall, in addition to other penalties provided by law, be fined not more than $25,000, imprisoned for not more than one year, or both.

(Added Pub. L. 94–455, title X, §1064(a), Oct. 4, 1976, 90 Stat. 1650; amended Pub. L. 95–600, title VII, §703(h)(2), (3), Nov. 6, 1978, 92 Stat. 2940; Pub. L. 98–369, div. A, title VIII, §802(c)(3), July 18, 1984, 98 Stat. 999; Pub. L. 99–514, title XVIII, §1876(p)(3), Oct. 22, 1986, 100 Stat. 2902; Pub. L. 106–519, §4(5), Nov. 15, 2000, 114 Stat. 2433; Pub. L. 108–357, title I, §101(b)(8), Oct. 22, 2004, 118 Stat. 1423.)

AMENDMENTS

2004—Subsec. (c)(1). Pub. L. 108–357 struck out ''941(a)(5),'' after ''sections 908(a),''.

2000—Subsec. (c)(1). Pub. L. 106–519 inserted ''941(a)(5),'' after ''908(a),''.

1986—Subsec. (c)(1), (2). Pub. L. 99–514 repealed section 802(c)(3) of Pub. L. 98–369 thereby restoring former text. See 1984 Amendment note below.

1984—Subsec. (c)(1), (2). Pub. L. 98–369 which substituted ''995(b)(1)(F)(i)'' for ''995(b)(1)(F)(ii)'' wherever appearing was repealed. See 1986 Amendment note above.

1978—Subsec. (c)(1). Pub. L. 95–600, §703(h)(2), substituted ''995(b)(1)(F)(ii)'' for ''995(b)(3)''.

Subsec. (c)(2). Pub. L. 95–600, §703(h)(3), substituted ''995(b)(1)(F)(ii)'' for ''995(b)(1)(D)(ii)''.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–519 applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

EFFECTIVE DATE

Section applicable to participation in or cooperation with an international boycott more than 30 days after Oct. 4, 1976, with special provisions for existing contracts, see section 1066(a) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 908 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

REPORTS BY THE SECRETARY

Pub. L. 94–455, title X, §1067, Oct. 4, 1976, 90 Stat. 1654, as amended by Pub. L. 98–369, div. A, title IV, §441(c), July 18, 1984, 98 Stat. 815, which required the Secretary to transmit a report every four years to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate relating to reports filed under section 999(a) of this title and describing the administration of provisions relating to international boycott activity, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 141 of House Document No. 103–7.

[§1000. Reserved]

Subchapter O—Gain or Loss on Disposition of Property

Part
I. Determination of amount of and recognition of gain or loss.
II. Basis rules of general application.
III. Common nontaxable exchanges.
IV. Special rules.
[V. Repealed.]
[VI. Repealed.][1]
VII. Wash sales; straddles.

AMENDMENTS

1995—Pub. L. 104–7, §2(c), Apr. 11, 1995, 109 Stat. 93, struck out item for part V ''Changes to effectuate F.C.C. policy''.

1990—Pub. L. 101–508, title XI, §11801(b)(9), Nov. 5, 1990, 104 Stat. 1388–522, struck out item for part VIII ''Distributions pursuant to Bank Holding Company Act''.

1981—Pub. L. 97–34, title V, §501(d)(3), Aug. 13, 1981, 95 Stat. 327, substituted ''Wash sales; straddles'' for ''Wash sales of stock or securities'' in item for part VII.

1976—Pub. L. 94–455, title XIX, §1901(b)(32)(I), Oct. 4, 1976, 90 Stat. 1800, struck out item for part IX ''Distributions pursuant to orders enforcing the antitrust laws''.

Pub. L. 94–452, §2(c), Oct. 2, 1976, 90 Stat. 1512, struck out ''of 1956'' after ''Bank Holding Company Act'' in item for part VIII.

1962—Pub. L. 87–403, §1(b), Feb. 2, 1962, 76 Stat. 5, added item for part IX.

1956—Act May 9, 1956, ch. 240, §10(b), 70 Stat. 146, added item for part VIII.

PART I—DETERMINATION OF AMOUNT OF AND RECOGNITION OF GAIN OR LOSS

Sec.
1001. Determination of amount of and recognition of gain or loss.
[1002. Repealed.]

AMENDMENTS

1976—Pub. L. 94–455, title XIX, §1901(b)(28)(B)(ii), Oct. 4, 1976, 90 Stat. 1799, struck out item 1002 ''Recognition of gain or loss''.

§1001. Determination of amount of and recognition of gain or loss

(a) Computation of gain or loss

The gain from the sale or other disposition of property shall be the excess of the amount real-

[1] Part repealed by Pub. L. 109–135 without corresponding amendment of subchapter analysis.