

“(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.

Sec.

- 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 sub-

section) 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 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

¹ See References in Text note below.

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 determina-

tion 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—

(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.

(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 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 subparagraph (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 Sec-

retary 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 includible 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 ac-

count 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 dividend 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.

(I) 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.)

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. (h)(2). Pub. L. 111-147, § 502(b)(1), amended par. (2) generally. Prior to amendment, par. (2) defined portfolio interest to also include interest on certain obligations not in registered form.

Subsec. (h)(3)(A). Pub. L. 111-147, § 502(b)(2)(A), struck out “subparagraph (A) or (B) of” before “paragraph (2)”.

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 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 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 subssecs. (a) and (b).

Subsecs. (d) to (f). Pub. L. 89-809 added subssecs. (d) to (f) and redesignated former subssecs. (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 section] 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 exemption 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 in¹ 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.

(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.

¹ So in original. Probably should be followed by “section”.

(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 subpara-

graph 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 in-

come 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 at-

tributable 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).

(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.

¹ See References in Text note below.

§ 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—

(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.

(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 re-

ceived 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.)

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

2010—Subsec. (c)(2). Pub. L. 111-147 amended par. (2) generally. Prior to amendment, par. (2) defined portfolio interest to also include interest on certain obligations not in registered form.

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 ex-

change 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 re-

ceived 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 reference¹]

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 allowed 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.

¹ Par. (3) heading editorially supplied.

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 section] 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 quali-

fied 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 subparagraph (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 sec-

tion 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 nonresident 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 non-resident 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 non-discrimination

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 non-resident 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.

¹ See 1976 Amendment note below.

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