

901 to any corporation organized under the China Trade Act, prior to repeal by Pub. L. 94-455, title X, § 1053(c), (e), Oct. 4, 1976, 90 Stat. 1649, effective with respect to taxable years beginning after Dec. 31, 1977.

Section 943, added Pub. L. 106-519, § 3(b), Nov. 15, 2000, 114 Stat. 2428; amended Pub. L. 107-147, title IV, § 417(14), Mar. 9, 2002, 116 Stat. 56, set forth other definitions and special rules for purposes of this subpart.

A prior section 943, acts Aug. 16, 1954, ch. 736, 68A Stat. 294; Oct. 4, 1976, Pub. L. 94-455, title X, § 1053(b), 90 Stat. 1648, set forth provisions relating to exclusion from gross income of residents of Formosa or Hong Kong of amounts distributed as dividends by China Trade Act corporations, prior to repeal by Pub. L. 94-455, title X, § 1053(c), (e), Oct. 4, 1976, 90 Stat. 1649, effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE OF REPEAL

Repeal applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108-357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

SUBPART F—CONTROLLED FOREIGN CORPORATIONS

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AMENDMENTS

2017—Pub. L. 115-97, title I, §§ 14103(b), 14201(c), 14212(b)(6), 14301(c)(39), Dec. 22, 2017, 131 Stat. 2208, 2213, 2217, 2225, added item 951A, substituted “Deemed paid credit for subpart F inclusions” for “Special rules for foreign tax credit” in item 960 and “Treatment of deferred foreign income upon transition to participation exemption system of taxation” for “Temporary dividends received deduction” in item 965, and struck out item 955 “Withdrawal of previously excluded subpart F income from qualified investment”.

2004—Pub. L. 108-357, title IV, § 422(c), Oct. 22, 2004, 118 Stat. 1519, added item 965.

1996—Pub. L. 104-188, title I, § 1501(c), Aug. 20, 1996, 110 Stat. 1826, which directed that the analysis for subpart F be amended by striking item 956A, could not be executed, because item 956A “Earnings invested in excess passive assets” had been editorially supplied.

1986—Pub. L. 99-514, title XII, § 1221(b)(3)(E), Oct. 22, 1986, 100 Stat. 2553, substituted “Insurance income” for “Income from insurance of United States risks” in item 953.

1975—Pub. L. 94-12, title VI, § 602(a)(3)(A), (c)(7), (d)(3)(B), Mar. 29, 1975, 89 Stat. 58, 60, 64, struck out ex-

isting item 955 and replaced it with an identical item 955 and struck out item 963 “Receipt of minimum distributions by domestic corporations”.

1962—Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1006, added heading of subpart F, and items 951-964.

§ 951. Amounts included in gross income of United States shareholders

(a) Amounts included

(1) In general

If a foreign corporation is a controlled foreign corporation at any time during any taxable year, every person who is a United States shareholder (as defined in subsection (b)) of such corporation and who owns (within the meaning of section 958(a)) stock in such corporation on the last day, in such year, on which such corporation is a controlled foreign corporation shall include in his gross income, for his taxable year in which or with which such taxable year of the corporation ends—

(A) his pro rata share (determined under paragraph (2)) of the corporation’s subpart F income for such year, and

(B) the amount determined under section 956 with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(2)).

(2) Pro rata share of subpart F income

The pro rata share referred to in paragraph (1)(A)(i) in the case of any United States shareholder is the amount—

(A) which would have been distributed with respect to the stock which such shareholder owns (within the meaning of section 958(a)) in such corporation if on the last day, in its taxable year, on which the corporation is a controlled foreign corporation it had distributed pro rata to its shareholders an amount (i) which bears the same ratio to its subpart F income for the taxable year, as (ii) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year, reduced by

(B) the amount of distributions received by any other person during such year as a dividend with respect to such stock, but only to the extent of the dividend which would have been received if the distribution by the corporation had been the amount (i) which bears the same ratio to the subpart F income of such corporation for the taxable year, as (ii) the part of such year during which such shareholder did not own (within the meaning of section 958(a)) such stock bears to the entire year.

For purposes of subparagraph (B), any gain included in the gross income of any person as a dividend under section 1248 shall be treated as a distribution received by such person with respect to the stock involved.

(b) United States shareholder defined

For purposes of this title, the term “United States shareholder” means, with respect to any foreign corporation, a United States person (as defined in section 957(c)) who owns (within the meaning of section 958(a)), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total

combined voting power of all classes of stock entitled to vote of such foreign corporation, or 10 percent or more of the total value of shares of all classes of stock of such foreign corporation.

(c) Coordination with passive foreign investment company provisions

If, but for this subsection, an amount would be included in the gross income of a United States shareholder for any taxable year both under subsection (a)(1)(A)(i) and under section 1293 (relating to current taxation of income from certain passive foreign investment companies), such amount shall be included in the gross income of such shareholder only under subsection (a)(1)(A).

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1006; amended Pub. L. 94-12, title VI, §602(a)(3)(B), (c)(3), (4), (d)(2), Mar. 29, 1975, 89 Stat. 58, 62; Pub. L. 94-455, title XIX, §1901(a)(119), Oct. 4, 1976, 90 Stat. 1784; Pub. L. 98-369, div. A, title I, §132(c)(1), title VIII, §801(d)(4), July 18, 1984, 98 Stat. 666, 996; Pub. L. 99-514, title XII, §1235(c), title XVIII, §1876(c)(2), Oct. 22, 1986, 100 Stat. 2574, 2898; Pub. L. 100-647, title I, §1012(i)(15), Nov. 10, 1988, 102 Stat. 3510; Pub. L. 103-66, title XIII, §§13231(a), 13232(c), Aug. 10, 1993, 107 Stat. 495, 502; Pub. L. 104-188, title I, §1501(a)(1), Aug. 20, 1996, 110 Stat. 1825; Pub. L. 105-34, title XI, §1112(a)(1), Aug. 5, 1997, 111 Stat. 969; Pub. L. 108-357, title IV, §413(c)(16), Oct. 22, 2004, 118 Stat. 1508; Pub. L. 110-172, §11(g)(13), Dec. 29, 2007, 121 Stat. 2490; Pub. L. 115-97, title I, §§14101(e)(1), 14212(b)(1)(A), (2), 14214(a), 14215(a), Dec. 22, 2017, 131 Stat. 2192, 2217, 2218.)

AMENDMENTS

2017—Subsec. (a)(1). Pub. L. 115-97, §14215(a), substituted “at any time” for “for an uninterrupted period of 30 days or more” in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 115-97, §14212(b)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the sum of—

“(i) his pro rata share (determined under paragraph (2) of the corporation’s subpart F income for such year.

“(ii) his pro rata share (determined under section 955(a)(3) as in effect before the enactment of the Tax Reduction Act of 1975) of the corporation’s previously excluded subpart F income withdrawn from investment in less developed countries for such year, and

“(iii) his pro rata share (determined under section 955(a)(3)) of the corporation’s previously excluded subpart F income withdrawn from foreign base company shipping operations for such year; and”.

Subsec. (a)(3). Pub. L. 115-97, §14212(b)(2), struck out par. (3). Text read as follows: “For purposes of paragraph (1)(A)(iii), the pro rata share of any United States shareholder of the previously excluded subpart F income of a controlled foreign corporation withdrawn from investment in foreign base company shipping operations shall not exceed an amount—

“(A) which bears the same ratio to his pro rata share of such income withdrawn (as determined under section 955(a)(3)) for the taxable year, as

“(B) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year.”

Subsec. (b). Pub. L. 115-97, §14214(a), inserted “, or 10 percent or more of the total value of shares of all classes of stock of such foreign corporation” after “such foreign corporation”.

Pub. L. 115-97, §14101(e)(1), substituted “title” for “subpart”.

2007—Subsecs. (c), (d). Pub. L. 110-172 redesignated subsec. (d) as (c) and struck out heading and text of former subsec. (c). Text read as follows:

“(1) IN GENERAL.—The foreign trade income of a FSC and any deductions which are apportioned or allocated to such income shall not be taken into account under this subpart.

“(2) FOREIGN TRADE INCOME.—For purposes of this subsection, the term ‘foreign trade income’ has the meaning given such term by section 923(b), but does not include section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6)).”

2004—Subsecs. (c) to (f). Pub. L. 108-357 redesignated subsecs. (e) and (f) as (c) and (d), respectively, and struck out former subsecs. (c) and (d), which related to coordination of provisions with election of a foreign investment company to distribute income and coordination with foreign personal holding company provisions, respectively.

1997—Subsec. (a)(2). Pub. L. 105-34 inserted concluding provisions “For purposes of subparagraph (B), any gain included in the gross income of any person as a dividend under section 1248 shall be treated as a distribution received by such person with respect to the stock involved.”

1996—Subsec. (a)(1)(A) to (C). Pub. L. 104-188 inserted “and” at end of subpar. (A), substituted period for “; and” at end of subpar. (B), and struck out subpar. (C) which read as follows: “the amount determined under section 956A with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(3)).”

1993—Subsec. (a)(1)(B). Pub. L. 103-66, §13232(c)(1), substituted “the amount determined under section 956 with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(2)); and” for “his pro rata share (determined under section 956(a)(2)) of the corporation’s increase in earnings invested in United States property for such year (but only to the extent not excluded from gross income under section 959(a)(2)); and”.

Subsec. (a)(1)(C). Pub. L. 103-66, §13231(a), added subpar. (C).

Subsec. (a)(4). Pub. L. 103-66, §13232(c)(2), struck out heading and text of par. (4). Text read as follows: “For purposes of paragraph (1)(B), the pro rata share of any United States shareholder in the increase of the earnings of a controlled foreign corporation invested in United States property shall not exceed an amount (A) which bears the same ratio to his pro rata share of such increase (as determined under section 956(a)(2)) for the taxable year, as (B) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year.”

1988—Subsec. (b). Pub. L. 100-647 substituted “section 957(c)” for “section 957(d)”.

1986—Subsec. (e)(1). Pub. L. 99-514, §1876(c)(2), struck out last sentence which read as follows: “For purposes of the preceding sentence, income described in paragraph (2) or (3) of section 921(d) shall be treated as derived from sources within the United States.”

Subsec. (f). Pub. L. 99-514, §1235(c), added subsec. (f).

1984—Subsec. (d). Pub. L. 98-369, §132(c)(1), amended subsec. (d) generally, substituting provision that, if a United States shareholder is required to include in gross income an amount under both subsec. (a)(1)(A)(ii) of this section and section 551(b) of this title, such amount be included only under subsec. (a)(1)(A)(ii) of this section for provision that, if a United States shareholder is subject to tax under section 551(b) of this title, such shareholder not be required to include as gross income any amount under subsec. (a) of this section.

Subsec. (e). Pub. L. 98-369, §801(d)(4), added subsec. (e).

1976—Subsec. (a)(1). Pub. L. 94-455 struck out “beginning after December 31, 1962” after “during any taxable year”.

1975—Subsec. (a)(1)(A)(i). Pub. L. 94-12, §602(a)(3)(B), struck out “except as provided in section 963,” before “his pro rata share”.

Subsec. (a)(1)(A)(ii). Pub. L. 94-12, §602(c)(3), substituted “(determined under section 955(a)(3) as in ef-

fect before the enactment of the Tax Reduction Act of 1975” for “(determined under section 955(a)(3))”.

Subsec. (a)(1)(A)(iii). Pub. L. 94-12, § 602(d)(2)(A), added cl. (iii).

Subsec. (a)(3). Pub. L. 94-12, § 602(c)(4), (d)(2)(B), substituted “paragraph (i)(A)(iii)” for “paragraph (1)(A)(ii)” and “foreign base company shipping operations” for “less developed countries”.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 14101(e)(1) of Pub. L. 115-97 applicable to distributions made after Dec. 31, 2017, see section 14101(f) of Pub. L. 115-97, set out as an Effective Date note under section 245A of this title.

Amendment by section 14212(b)(1)(A), (2) of Pub. L. 115-97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14212(c) of Pub. L. 115-97, set out as a note under section 851 of this title.

Pub. L. 115-97, title I, § 14214(b), Dec. 22, 2017, 131 Stat. 2218, provided that: “The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

Pub. L. 115-97, title I, § 14215(b), Dec. 22, 2017, 131 Stat. 2218, provided that: “The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

EFFECTIVE DATE OF 2004 AMENDMENT

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

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XI, § 1112(a)(2), Aug. 5, 1997, 111 Stat. 969, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to dispositions after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104-188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-66, title XIII, § 13231(e), Aug. 10, 1993, 107 Stat. 501, provided that: “The amendments made by this section [enacting section 956A of this title and amending this section and sections 959, 989, 1293, 1296, and 1297 of this title] shall apply to taxable years of foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.”

Pub. L. 103-66, title XIII, § 13232(d), Aug. 10, 1993, 107 Stat. 502, provided that: “The amendments made by this section [amending this section and section 956 of this title] shall apply to taxable years of controlled foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end.”

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1235(c) of Pub. L. 99-514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99-514, set out as an Effective Date note under section 1291 of this title.

Amendment by section 1876(c)(2) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, § 132(d)(2)(A), July 18, 1984, 98 Stat. 667, provided that: “The amendment made by paragraph (1) of subsection (c) [amending this section] shall apply to taxable years of United States shareholders beginning after the date of the enactment of this Act [July 18, 1984].”

Amendment by section 801(d)(4) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-12 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders (within the meaning of 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94-12, set out as a note under section 954 of this title.

EFFECTIVE DATE

Pub. L. 87-834, § 12(c), Oct. 16, 1962, 76 Stat. 1031, provided that: “The amendments made by this section [enacting this section and sections 952 to 964 and 970 to 972 of this title and amending sections 901, 904, and 1016 of this title] shall apply with respect to taxable years of foreign corporations beginning after December 31, 1962, and to taxable year of United States shareholders within which or with which such taxable years of such foreign corporations end.”

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

§ 951A. Global intangible low-taxed income included in gross income of United States shareholders

(a) In general

Each person who is a United States shareholder of any controlled foreign corporation for any taxable year of such United States shareholder shall include in gross income such shareholder’s global intangible low-taxed income for such taxable year.

(b) Global intangible low-taxed income

For purposes of this section—

(1) In general

The term “global intangible low-taxed income” means, with respect to any United States shareholder for any taxable year of such United States shareholder, the excess (if any) of—

(A) such shareholder’s net CFC tested income for such taxable year, over

(B) such shareholder’s net deemed tangible income return for such taxable year.

(2) Net deemed tangible income return

The term “net deemed tangible income return” means, with respect to any United States shareholder for any taxable year, the excess of—

(A) 10 percent of the aggregate of such shareholder’s pro rata share of the qualified business asset investment of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such taxable year (determined for each taxable year of each such controlled foreign corporation which ends in or with such taxable year of such United States shareholder), over

(B) the amount of interest expense taken into account under subsection (c)(2)(A)(ii) in determining the shareholder’s net CFC tested income for the taxable year to the extent the interest income attributable to such expense is not taken into account in determining such shareholder’s net CFC tested income.

(c) Net CFC tested income

For purposes of this section—

(1) In general

The term “net CFC tested income” means, with respect to any United States shareholder for any taxable year of such United States shareholder, the excess (if any) of—

(A) the aggregate of such shareholder’s pro rata share of the tested income of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such taxable year of such United States shareholder (determined for each taxable year of such controlled foreign corporation which ends in or with such taxable year of such United States shareholder), over

(B) the aggregate of such shareholder’s pro rata share of the tested loss of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such taxable year of such United States shareholder (determined for each taxable year of such controlled foreign corporation which ends in or with such taxable year of such United States shareholder).

(2) Tested income; tested loss

For purposes of this section—

(A) Tested income

The term “tested income” means, with respect to any controlled foreign corporation for any taxable year of such controlled foreign corporation, the excess (if any) of—

(i) the gross income of such corporation determined without regard to—

(I) any item of income described in section 952(b),

(II) any gross income taken into account in determining the subpart F income of such corporation,

(III) any gross income excluded from the foreign base company income (as defined in section 954) and the insurance income (as defined in section 953) of such corporation by reason of section 954(b)(4),

(IV) any dividend received from a related person (as defined in section 954(d)(3)), and

(V) any foreign oil and gas extraction income (as defined in section 907(c)(1)) of such corporation, over

(ii) the deductions (including taxes) properly allocable to such gross income under rules similar to the rules of section 954(b)(5) (or to which such deductions would be allocable if there were such gross income).

(B) Tested loss**(i) In general**

The term “tested loss” means, with respect to any controlled foreign corporation for any taxable year of such controlled foreign corporation, the excess (if any) of the amount described in subparagraph (A)(ii) over the amount described in subparagraph (A)(i).

(ii) Coordination with subpart F to deny double benefit of losses

Section 952(c)(1)(A) shall be applied by increasing the earnings and profits of the controlled foreign corporation by the tested loss of such corporation.

(d) Qualified business asset investment

For purposes of this section—

(1) In general

The term “qualified business asset investment” means, with respect to any controlled foreign corporation for any taxable year, the average of such corporation’s aggregate adjusted bases as of the close of each quarter of such taxable year in specified tangible property—

(A) used in a trade or business of the corporation, and

(B) of a type with respect to which a deduction is allowable under section 167.

(2) Specified tangible property**(A) In general**

The term “specified tangible property” means, except as provided in subparagraph (B), any tangible property used in the production of tested income.

(B) Dual use property

In the case of property used both in the production of tested income and income which is not tested income, such property shall be treated as specified tangible property in the same proportion that the gross income described in subsection (c)(1)(A) produced with respect to such property bears to

the total gross income produced with respect to such property.

(3)¹ Determination of adjusted basis

For purposes of this subsection, notwithstanding any provision of this title (or any other provision of law) which is enacted after the date of the enactment of this section, the adjusted basis in any property shall be determined—

(A) by using the alternative depreciation system under section 168(g), and

(B) by allocating the depreciation deduction with respect to such property ratably to each day during the period in the taxable year to which such depreciation relates.

(3)¹ Partnership property

For purposes of this subsection, if a controlled foreign corporation holds an interest in a partnership at the close of such taxable year of the controlled foreign corporation, such controlled foreign corporation shall take into account under paragraph (1) the controlled foreign corporation's distributive share of the aggregate of the partnership's adjusted bases (determined as of such date in the hands of the partnership) in tangible property held by such partnership to the extent such property—

(A) is used in the trade or business of the partnership,

(B) is of a type with respect to which a deduction is allowable under section 167, and

(C) is used in the production of tested income (determined with respect to such controlled foreign corporation's distributive share of income with respect to such property).

For purposes of this paragraph, the controlled foreign corporation's distributive share of the adjusted basis of any property shall be the controlled foreign corporation's distributive share of income with respect to such property.

(4) Regulations

The Secretary shall issue such regulations or other guidance as the Secretary determines appropriate to prevent the avoidance of the purposes of this subsection, including regulations or other guidance which provide for the treatment of property if—

(A) such property is transferred, or held, temporarily, or

(B) the avoidance of the purposes of this paragraph is a factor in the transfer or holding of such property.

(e) Determination of pro rata share, etc.

For purposes of this section—

(1) In general

The pro rata shares referred to in subsections (b), (c)(1)(A), and (c)(1)(B), respectively, shall be determined under the rules of section 951(a)(2) in the same manner as such section applies to subpart F income and shall be taken into account in the taxable year of the United States shareholder in which or with which the taxable year of the controlled foreign corporation ends.

(2) Treatment as United States shareholder

A person shall be treated as a United States shareholder of a controlled foreign corporation for any taxable year of such person only if such person owns (within the meaning of section 958(a)) stock in such foreign corporation on the last day in the taxable year of such foreign corporation on which such foreign corporation is a controlled foreign corporation.

(3) Treatment as controlled foreign corporation

A foreign corporation shall be treated as a controlled foreign corporation for any taxable year if such foreign corporation is a controlled foreign corporation at any time during such taxable year.

(f) Treatment as subpart F income for certain purposes

(1) In general

(A) Application

Except as provided in subparagraph (B), any global intangible low-taxed income included in gross income under subsection (a) shall be treated in the same manner as an amount included under section 951(a)(1)(A) for purposes of applying sections 168(h)(2)(B), 535(b)(10), 851(b), 904(h)(1), 959, 961, 962, 993(a)(1)(E), 996(f)(1), 1248(b)(1), 1248(d)(1), 6501(e)(1)(C), 6654(d)(2)(D), and 6655(e)(4).

(B) Exception

The Secretary shall provide rules for the application of subparagraph (A) to other provisions of this title in any case in which the determination of subpart F income is required to be made at the level of the controlled foreign corporation.

(2) Allocation of global intangible low-taxed income to controlled foreign corporations

For purposes of the sections referred to in paragraph (1), with respect to any controlled foreign corporation any pro rata amount from which is taken into account in determining the global intangible low-taxed income included in gross income of a United States shareholder under subsection (a), the portion of such global intangible low-taxed income which is treated as being with respect to such controlled foreign corporation is—

(A) in the case of a controlled foreign corporation with no tested income, zero, and

(B) in the case of a controlled foreign corporation with tested income, the portion of such global intangible low-taxed income which bears the same ratio to such global intangible low-taxed income as—

(i) such United States shareholder's pro rata amount of the tested income of such controlled foreign corporation, bears to

(ii) the aggregate amount described in subsection (c)(1)(A) with respect to such United States shareholder.

(Added Pub. L. 115-97, title I, §14201(a), Dec. 22, 2017, 131 Stat. 2208.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(3), is the date of the enactment of Pub. L. 115-97, which was approved Dec. 22, 2017.

¹ So in original. There are two pars. designated (3).

EFFECTIVE DATE

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14201(d) of Pub. L. 115-97, set out as an Effective Date of 2017 Amendment note under section 904 of this title.

§ 952. Subpart F income defined**(a) In general**

For purposes of this subpart, the term “subpart F income” means, in the case of any controlled foreign corporation, the sum of—

- (1) insurance income (as defined under section 953),
- (2) the foreign base company income (as determined under section 954),
- (3) an amount equal to the product of—
 - (A) the income of such corporation other than income which—
 - (i) is attributable to earnings and profits of the foreign corporation included in the gross income of a United States person under section 951 (other than by reason of this paragraph), or
 - (ii) is described in subsection (b),

multiplied by

- (B) the international boycott factor (as determined under section 999),
- (4) the sum of the amounts of any illegal bribes, kickbacks, or other payments (within the meaning of section 162(c)) paid by or on behalf of the corporation during the taxable year of the corporation directly or indirectly to an official, employee, or agent in fact of a government, and
- (5) the income of such corporation derived from any foreign country during any period during which section 901(j) applies to such foreign country.

The payments referred to in paragraph (4) are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person. For purposes of paragraph (5), the income described therein shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income.

(b) Exclusion of United States income

In the case of a controlled foreign corporation, subpart F income does not include any item of income from sources within the United States which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States. For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account.

(c) Limitation**(1) In general****(A) Subpart F income limited to current earnings and profits**

For purposes of subsection (a), the subpart F income of any controlled foreign corpora-

tion for any taxable year shall not exceed the earnings and profits of such corporation for such taxable year.

(B) Certain prior year deficits may be taken into account**(i) In general**

The amount included in the gross income of any United States shareholder under section 951(a)(1)(A) for any taxable year and attributable to a qualified activity shall be reduced by the amount of such shareholder's pro rata share of any qualified deficit.

(ii) Qualified deficit

The term “qualified deficit” means any deficit in earnings and profits of the controlled foreign corporation for any prior taxable year which began after December 31, 1986, and for which the controlled foreign corporation was a controlled foreign corporation; but only to the extent such deficit—

- (I) is attributable to the same qualified activity as the activity giving rise to the income being offset, and
- (II) has not previously been taken into account under this subparagraph.

In determining the deficit attributable to qualified activities described in subclause (II) or (III) of clause (iii),¹ deficits in earnings and profits (to the extent not previously taken into account under this section) for taxable years beginning after 1962 and before 1987 also shall be taken into account. In the case of the qualified activity described in clause (iii)(I),¹ the rule of the preceding sentence shall apply, except that “1982” shall be substituted for “1962”.

(iii) Qualified activity

For purposes of this paragraph, the term “qualified activity” means any activity giving rise to—

- (I) foreign base company sales income,
- (II) foreign base company services income,
- (III) in the case of a qualified insurance company, insurance income or foreign personal holding company income, or
- (IV) in the case of a qualified financial institution, foreign personal holding company income.

(iv) Pro rata share

For purposes of this paragraph, the shareholder's pro rata share of any deficit for any prior taxable year shall be determined under rules similar to rules under section 951(a)(2) for whichever of the following yields the smaller share:

- (I) the close of the taxable year, or
- (II) the close of the taxable year in which the deficit arose.

(v) Qualified insurance company

For purposes of this subparagraph, the term “qualified insurance company”

¹ See References in Text note below.

means any controlled foreign corporation predominantly engaged in the active conduct of an insurance business in the taxable year and in the prior taxable years in which the deficit arose.

(vi) Qualified financial institution

For purposes of this paragraph, the term “qualified financial institution” means any controlled foreign corporation predominantly engaged in the active conduct of a banking, financing, or similar business in the taxable year and in the prior taxable year in which the deficit arose.

(vii) Special rules for insurance income

(I) In general

An election may be made under this clause to have section 953(a) applied for purposes of this title without regard to the same country exception under paragraph (1)(A) thereof. Such election, once made, may be revoked only with the consent of the Secretary.

(II) Special rules for affiliated groups

In the case of an affiliated group of corporations (within the meaning of section 1504 but without regard to section 1504(b)(3) and by substituting “more than 50 percent” for “at least 80 percent” each place it appears), no election may be made under subclause (I) for any controlled foreign corporation unless such election is made for all other controlled foreign corporations who are members of such group and who were created or organized under the laws of the same country as such controlled foreign corporation. For purposes of clause (v), in determining whether any controlled corporation described in the preceding sentence is a qualified insurance company, all such corporations shall be treated as 1 corporation.

(C) Certain deficits of member of the same chain of corporations may be taken into account

(i) In general

A controlled foreign corporation may elect to reduce the amount of its subpart F income for any taxable year which is attributable to any qualified activity by the amount of any deficit in earnings and profits of a qualified chain member for a taxable year ending with (or within) the taxable year of such controlled foreign corporation to the extent such deficit is attributable to such activity. To the extent any deficit reduces subpart F income under the preceding sentence, such deficit shall not be taken into account under subparagraph (B).

(ii) Qualified chain member

For purposes of this subparagraph, the term “qualified chain member” means, with respect to any controlled foreign corporation, any other corporation which is created or organized under the laws of the same foreign country as the controlled foreign corporation but only if—

(I) all the stock of such other corporation (other than directors’ qualifying shares) is owned at all times during the taxable year in which the deficit arose (directly or through 1 or more corporations other than the common parent) by such controlled foreign corporation, or

(II) all the stock of such controlled foreign corporation (other than directors’ qualifying shares) is owned at all times during the taxable year in which the deficit arose (directly or through 1 or more corporations other than the common parent) by such other corporation.

(iii) Coordination

This subparagraph shall be applied after subparagraphs (A) and (B).

(2) Recharacterization in subsequent taxable years

If the subpart F income of any controlled foreign corporation for any taxable year was reduced by reason of paragraph (1)(A), any excess of the earnings and profits of such corporation for any subsequent taxable year over the subpart F income of such foreign corporation for such taxable year shall be recharacterized as subpart F income under rules similar to the rules applicable under section 904(f)(5).

(3) Special rule for determining earnings and profits

For purposes of this subsection, earnings and profits of any controlled foreign corporation shall be determined without regard to paragraphs (4), (5), and (6) of section 312(n). Under regulations, the preceding sentence shall not apply to the extent it would increase earnings and profits by an amount which was previously distributed by the controlled foreign corporation.

(d) Income derived from foreign country

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subsection (a)(5), including regulations which treat income paid through 1 or more entities as derived from a foreign country to which section 901(j) applies if such income was, without regard to such entities, derived from such country.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1008; amended Pub. L. 89-809, title I, §104(j), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 94-455, title X, §§1062, 1065(a)(1), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1650, 1653, 1834; Pub. L. 97-248, title II, §288(b)(1), Sept. 3, 1982, 96 Stat. 571; Pub. L. 99-509, title VIII, §8041(b), Oct. 21, 1986, 100 Stat. 1963; Pub. L. 99-514, title XII, §1221(b)(3)(A), (f), title XVIII, §1876(c)(1), Oct. 22, 1986, 100 Stat. 2552, 2554, 2898; Pub. L. 100-647, title I, §1012(i)(16), (22)-(25)(A), title VI, §6131(a), Nov. 10, 1988, 102 Stat. 3510-3512, 3720; Pub. L. 105-34, title XI, §1112(c)(1), Aug. 5, 1997, 111 Stat. 969; Pub. L. 108-357, title IV, §415(c)(1), Oct. 22, 2004, 118 Stat. 1511; Pub. L. 109-135, title IV, §412(kk), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 110-172, §11(g)(14), Dec. 29, 2007, 121 Stat. 2490; Pub. L. 115-97, title I, §§14211(b)(1), 14212(b)(1)(C), Dec. 22, 2017, 131 Stat. 2217.)

REFERENCES IN TEXT

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (a), is title I of Pub. L. 95-213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd-1 to 78dd-3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

Clause (iii), referred to in subsec. (c)(1)(B)(ii), means cl. (iii) of subsec. (c)(1)(B), which was amended by Pub. L. 115-97, § 14211(b)(1). As amended, subcl. (I) was struck out and subcls. (II) and (III) were redesignated (I) and (II), respectively. See 2017 Amendment note below.

AMENDMENTS

2017—Subsec. (c)(1)(B)(i). Pub. L. 115-97, § 14212(b)(1)(C), substituted “section 951(a)(1)(A)” for “section 951(a)(1)(A)(i)”.

Subsec. (c)(1)(B)(iii). Pub. L. 115-97, § 14211(b)(1), redesignated subcls. (II) to (V) as (I) to (IV), respectively, and struck out former subcl. (I) which read as follows: “foreign base company oil related income.”

2007—Subsec. (b). Pub. L. 110-172 struck out second sentence which read as follows: “For purposes of the preceding sentence, income described in paragraph (2) or (3) of section 921(d) shall be treated as derived from sources within the United States.”

2005—Subsec. (c)(1)(B)(ii). Pub. L. 109-135 substituted “subclause (II) or (III) of clause (iii)” for “clause (iii)(III) or (IV)” and “clause (iii)(I)” for “clause (iii)(II)” in concluding provisions.

2004—Subsec. (c)(1)(B)(iii). Pub. L. 108-357 redesignated subcls. (II) to (VI) as (I) to (V), respectively, and struck out former subcl. (I) which read as follows: “foreign base company shipping income.”

1997—Subsec. (b). Pub. L. 105-34 inserted at end “For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account.”

1988—Subsec. (c)(1)(B)(ii). Pub. L. 100-647, § 1012(i)(24), inserted at end “In determining the deficit attributable to qualified activities described in clause (iii)(III) or (IV), deficits in earnings and profits (to the extent not previously taken into account under this section) for taxable years beginning after 1962 and before 1987 also shall be taken into account. In the case of the qualified activity described in clause (iii)(II), the rule of the preceding sentence shall apply, except that ‘1982’ shall be substituted for ‘1962’.”

Subsec. (c)(1)(B)(iii)(III) to (VI). Pub. L. 100-647, § 1012(i)(22), (23), added subcls. (III) and (IV), redesignated former subcl. (III) as (V) and substituted “insurance income or foreign personal holding company income,” for “insurance income”, and redesignated former subcl. (IV) as (VI).

Subsec. (c)(1)(B)(vii). Pub. L. 100-647, § 6131(a), added cl. (vii).

Subsec. (c)(1)(C). Pub. L. 100-647, § 1012(i)(25)(A), added subpar. (C).

Subsec. (c)(3). Pub. L. 100-647, § 1012(i)(16), added par. (3).

1986—Subsec. (a). Pub. L. 99-509, § 8041(b)(1), added par. (5) and last sentence.

Subsec. (a)(1). Pub. L. 99-514, § 1221(b)(3)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “the income derived from the insurance of United States risks (as determined under section 953), and”.

Subsec. (b). Pub. L. 99-514, § 1876(c)(1), inserted last sentence.

Subsec. (c). Pub. L. 99-514, § 1221(f), added subsec. (c) and struck out former subsec. (c) which read as follows: “For purposes of subsection (a), the subpart F income of any controlled foreign corporation for any taxable year shall not exceed the earnings and profits of such corporation for such year reduced by the amount (if any) by which—

“(1) an amount equal to—

“(A) the sum of the deficits in earnings and profits for prior taxable years beginning after December 31, 1962, plus

“(B) the sum of the deficits in earnings and profits for taxable years beginning after December 31, 1959, and before January 1, 1963 (reduced by the sum of the earnings and profits for such taxable years); exceeds

“(2) an amount equal to the sum of the earnings and profits for prior taxable years beginning after December 31, 1962, allocated to other earnings and profits under section 959(c)(3).

For purposes of the preceding sentence, any deficit in earnings and profits for any prior taxable year shall be taken into account under paragraph (1) for any taxable year only to the extent it has not been taken into account under such paragraph for any preceding taxable year to reduce earnings and profits of such preceding year.”

Subsec. (d). Pub. L. 99-509, § 8041(b)(2), added subsec. (d).

Pub. L. 99-514, § 1221(f), struck out subsec. (d), special rule in case of indirect ownership, which read as follows: “For purposes of subsection (c), if—

“(1) a United States shareholder owns (within the meaning of section 958(a)) stock of a foreign corporation, and by reason of such ownership owns (within the meaning of such section) stock of any other foreign corporation, and

“(2) any of such foreign corporations has a deficit in earnings and profits for the taxable year, then the earnings and profits for the taxable year of each such foreign corporation which is a controlled foreign corporation shall, with respect to such United States shareholder, be properly reduced to take into account any deficit described in paragraph (2) in such manner as the Secretary shall prescribe by regulations.”

1982—Subsec. (a). Pub. L. 97-248 inserted provision that the payments referred to in par. (4) are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person.

1976—Subsec. (a)(3). Pub. L. 94-455, § 1062(a), added par. (3).

Subsec. (a)(4). Pub. L. 94-455, § 1065(a)(1), added par. (4).

Subsec. (d). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1966—Subsec. (b). Pub. L. 89-809 substituted “In the case of a controlled foreign corporation, subpart F income does not include any item of income from sources within the United States which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States” for “Subpart F income does not include any item includible in gross income under this chapter (other than this subpart) as income derived from sources within the United States of a foreign corporation engaged in trade or business in the United States”.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-97, title I, § 14211(c), Dec. 22, 2017, 131 Stat. 2217, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

Amendment by section 14212(b)(1)(C) of Pub. L. 115-97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14212(c) of Pub. L. 115-97, set out as a note under section 851 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title IV, § 415(d), Oct. 22, 2004, 118 Stat. 1511, provided that: “The amendments made by this

section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XI, §1112(c)(2), Aug. 5, 1997, 111 Stat. 970, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1986.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(i)(16), (22)–(25)(A) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Pub. L. 100-647, title VI, §6131(b), Nov. 10, 1988, 102 Stat. 3720, provided that: “The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 1221(f) of the Reform Act [Pub. L. 99-514].”

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1221(b)(3)(A), (f) of Pub. L. 99-514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99-514, set out as a note under section 954 of this title.

Amendment by section 1876(c)(1) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Amendment by Pub. L. 99-509 effective Jan. 1, 1987, see section 8041(c) of Pub. L. 99-509, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to payments made after Sept. 3, 1982, see section 288(c) of Pub. L. 97-248, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1062 of Pub. L. 94-455 applicable to participation in or cooperation with an international boycott more than 30 days after Oct. 4, 1976, see section 1066(a) of Pub. L. 94-455, set out as a note under section 908 of this title.

Pub. L. 94-455, title X, §1066(b), Oct. 4, 1976, 90 Stat. 1654, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by section 1065 [amending this section and sections 995 and 964 of this title] apply to payments described in section 162(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made more than 30 days after the date of enactment of this Act [Oct. 4, 1976].”

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

DETERMINATION OF CORPORATE EARNINGS AND PROFITS FOR PURPOSES OF APPLYING SUBSECTION (c)(1)(A)

Pub. L. 100-647, title I, §1012(i)(6), Nov. 10, 1988, 102 Stat. 3508, provided that: “For purposes of applying section 952(c)(1)(A) of the 1986 Code, the earnings and profits of any corporation shall be determined without regard to any increase in earnings and profits under section 1023(e)(3)(C) of the Reform Act [Pub. L. 99-514, set out as an Effective Date note under section 846 of this title].”

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

§ 953. Insurance income

(a) Insurance income

(1) In general

For purposes of section 952(a)(1), the term “insurance income” means any income which—

(A) is attributable to the issuing (or reinsuring) of an insurance or annuity contract, and

(B) would (subject to the modifications provided by subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance company.

(2) Exception

Such term shall not include any exempt insurance income (as defined in subsection (e)).

(b) Special rules

For purposes of subsection (a)—

(1) The following provisions of subchapter L shall not apply:

(A) So much of section 805(a)(8) as relates to the deduction allowed under section 172.

(B) Section 832(c)(5) (relating to certain capital losses).

(2) The items referred to in—

(A) section 803(a)(1) (relating to gross amount of premiums and other considerations),

(B) section 803(a)(2) (relating to net decrease in reserves),

(C) section 805(a)(2) (relating to net increase in reserves), and

(D) section 832(b)(4) (relating to premiums earned on insurance contracts),

shall be taken into account only to the extent they are in respect of any reinsurance or the issuing of any insurance or annuity contract described in subsection (a)(1).

(3) Reserves for any insurance or annuity contract shall be determined in the same manner as under section 954(i).

(4) All items of income, expenses, losses, and deductions shall be properly allocated or apportioned under regulations prescribed by the Secretary.

(c) Special rule for certain captive insurance companies

(1) In general

For purposes only of taking into account related person insurance income—

(A) the term “United States shareholder” means, with respect to any foreign corporation, a United States person (as defined in section 957(c)) who owns (within the meaning of section 958(a)) any stock of the foreign corporation,

(B) the term “controlled foreign corporation” has the meaning given to such term by section 957(a) determined by substituting “25 percent or more” for “more than 50 percent”, and

(C) the pro rata share referred to in section 951(a)(1)(A) shall be determined under paragraph (5) of this subsection.

(2) Related person insurance income

For purposes of this subsection, the term “related person insurance income” means any insurance income (within the meaning of subsection (a)) attributable to a policy of insurance or reinsurance with respect to which the person (directly or indirectly) insured is a United States shareholder in the foreign corporation or a related person to such a shareholder.

(3) Exceptions

(A) Corporations not held by insureds

Paragraph (1) shall not apply to any foreign corporation if at all times during the taxable year of such foreign corporation—

- (i) less than 20 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and
- (ii) less than 20 percent of the total value of such corporation,

is owned (directly or indirectly under the principles of section 883(c)(4)) by persons who are (directly or indirectly) insured under any policy of insurance or reinsurance issued by such corporation or who are related persons to any such person.

(B) De minimis exception

Paragraph (1) shall not apply to any foreign corporation for a taxable year of such corporation if the related person insurance income (determined on a gross basis) of such corporation for such taxable year is less than 20 percent of its insurance income (as so determined) for such taxable year determined without regard to those provisions of subsection (a)(1) which limit insurance income to income from countries other than the country in which the corporation was created or organized.

(C) Election to treat income as effectively connected

Paragraph (1) shall not apply to any foreign corporation for any taxable year if—

- (i) such corporation elects (at such time and in such manner as the Secretary may prescribe)—

(I) to treat its related person insurance income for such taxable year as income effectively connected with the conduct of a trade or business in the United States, and

(II) to waive all benefits (other than with respect to section 884) with respect to related person insurance income granted by the United States under any treaty between the United States and any foreign country, and

- (ii) such corporation meets such requirements as the Secretary shall prescribe to

ensure that the tax imposed by this chapter on such income is paid.

An election under this subparagraph made for any taxable year shall not be effective if the corporation (or any predecessor thereof) was a disqualified corporation for the taxable year for which the election was made or for any prior taxable year beginning after 1986.

(D) Special rules for subparagraph (C)

(i) Period during which election in effect

(I) In general

Except as provided in subclause (II), any election under subparagraph (C) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(II) Termination

If a foreign corporation which made an election under subparagraph (C) for any taxable year is a disqualified corporation for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

(ii) Exemption from tax imposed by section 4371

The tax imposed by section 4371 shall not apply with respect to any related person insurance income treated as effectively connected with the conduct of a trade or business within the United States under subparagraph (C).

(E) Disqualified corporation

For purposes of this paragraph the term “disqualified corporation” means, with respect to any taxable year, any foreign corporation which is a controlled foreign corporation for an uninterrupted period of 30 days or more during such taxable year (determined without regard to this subsection) but only if a United States shareholder (determined without regard to this subsection) owns (within the meaning of section 958(a)) stock in such corporation at some time during such taxable year.

(4) Treatment of mutual insurance companies

In the case of a mutual insurance company—

(A) this subsection shall apply,

(B) policyholders of such company shall be treated as shareholders, and

(C) appropriate adjustments in the application of this subpart shall be made under regulations prescribed by the Secretary.

(5) Determination of pro rata share

(A) In general

The pro rata share determined under this paragraph for any United States shareholder is the lesser of—

- (i) the amount which would be determined under paragraph (2) of section 951(a) if—

(I) only related person insurance income were taken into account,

(II) stock owned (within the meaning of section 958(a)) by United States share-

holders on the last day of the taxable year were the only stock in the foreign corporation, and

(III) only distributions received by United States shareholders were taken into account under subparagraph (B) of such paragraph (2), or

(ii) the amount which would be determined under paragraph (2) of section 951(a) if the entire earnings and profits of the foreign corporation for the taxable year were subpart F income.

(B) Coordination with other provisions

The Secretary shall prescribe regulations providing for such modifications to the provisions of this subpart as may be necessary or appropriate by reason of subparagraph (A).

(6) Related person

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), the term “related person” has the meaning given such term by section 954(d)(3).

(B) Treatment of certain liability insurance policies

In the case of any policy of insurance covering liability arising from services performed as a director, officer, or employee of a corporation or as a partner or employee of a partnership, the person performing such services and the entity for which such services are performed shall be treated as related persons.

(7) Coordination with section 1248

For purposes of section 1248, if any person is (or would be but for paragraph (3)) treated under paragraph (1) as a United States shareholder with respect to any foreign corporation which would be taxed under subchapter L if it were a domestic corporation and which is (or would be but for paragraph (3)) treated under paragraph (1) as a controlled foreign corporation—

(A) such person shall be treated as meeting the stock ownership requirements of section 1248(a)(2) with respect to such foreign corporation, and

(B) such foreign corporation shall be treated as a controlled foreign corporation.

(8) Regulations

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

(A) regulations preventing the avoidance of this subsection through cross insurance arrangements or otherwise, and

(B) regulations which may provide that a person will not be treated as a United States shareholder under paragraph (1) with respect to any foreign corporation if neither such person (nor any related person to such person) is (directly or indirectly) insured under any policy of insurance or reinsurance issued by such foreign corporation.

(d) Election by foreign insurance company to be treated as domestic corporation

(1) In general

If—

(A) a foreign corporation is a controlled foreign corporation (as defined in section 957(a) by substituting “25 percent or more” for “more than 50 percent” and by using the definition of United States shareholder under 953(c)(1)(A)),

(B) such foreign corporation would qualify under part I or II of subchapter L for the taxable year if it were a domestic corporation,

(C) such foreign corporation meets such requirements as the Secretary shall prescribe to ensure that the taxes imposed by this chapter on such foreign corporation are paid, and

(D) such foreign corporation makes an election to have this paragraph apply and waives all benefits to such corporation granted by the United States under any treaty,

for purposes of this title, such corporation shall be treated as a domestic corporation.

(2) Period during which election is in effect

(A) In general

Except as provided in subparagraph (B), an election under paragraph (1) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(B) Termination

If a corporation which made an election under paragraph (1) for any taxable year fails to meet the requirements of subparagraphs (A), (B), and (C), of paragraph (1) for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

(3) Treatment of losses

If any corporation treated as a domestic corporation under this subsection is treated as a member of an affiliated group for purposes of chapter 6 (relating to consolidated returns), any loss of such corporation shall be treated as a dual consolidated loss for purposes of section 1503(d) without regard to paragraph (2)(B) thereof.

(4) Effect of election

(A) In general

For purposes of section 367, any foreign corporation making an election under paragraph (1) shall be treated as transferring (as of the 1st day of the 1st taxable year to which such election applies) all of its assets to a domestic corporation in connection with an exchange to which section 354 applies.

(B) Exception for pre-1988 earnings and profit

(i) In general

Earnings and profits of the foreign corporation accumulated in taxable years beginning before January 1, 1988, shall not be

included in the gross income of the persons holding stock in such corporation by reason of subparagraph (A).

(ii) Treatment of distributions

For purposes of this title, any distribution made by a corporation to which an election under paragraph (1) applies out of earnings and profits accumulated in taxable years beginning before January 1, 1988, shall be treated as a distribution made by a foreign corporation.

(iii) Certain rules to continue to apply to pre-1988 earnings

The provisions specified in clause (iv) shall be applied without regard to paragraph (1), except that, in the case of a corporation to which an election under paragraph (1) applies, only earnings and profits accumulated in taxable years beginning before January 1, 1988, shall be taken into account.

(iv) Specified provisions

The provisions specified in this clause are:

(I) Section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporations).

(II) Subpart F of part III of subchapter N to the extent such subpart relates to earnings invested in United States property.

(III) Section 884 to the extent the foreign corporation reinvested 1987 earnings and profits in United States assets.

(5) Effect of termination

For purposes of section 367, if—

(A) an election is made by a corporation under paragraph (1) for any taxable year, and

(B) such election ceases to apply for any subsequent taxable year,

such corporation shall be treated as a domestic corporation transferring (as of the 1st day of such subsequent taxable year) all of its property to a foreign corporation in connection with an exchange to which section 354 applies.

(6) Additional tax on corporation making election

(A) In general

If a corporation makes an election under paragraph (1), the amount of tax imposed by this chapter for the 1st taxable year to which such election applies shall be increased by the amount determined under subparagraph (B).

(B) Amount of tax

The amount of tax determined under this paragraph shall be equal to the lesser of—

(i) $\frac{3}{4}$ of 1 percent of the aggregate amount of capital and accumulated surplus of the corporation as of December 31, 1987, or

(ii) \$1,500,000.

(e) Exempt insurance income

For purposes of this section—

(1) Exempt insurance income defined

(A) In general

The term “exempt insurance income” means income derived by a qualifying insurance company which—

(i) is attributable to the issuing (or reinsuring) of an exempt contract by such company or a qualifying insurance company branch of such company, and

(ii) is treated as earned by such company or branch in its home country for purposes of such country’s tax laws.

(B) Exception for certain arrangements

Such term shall not include income attributable to the issuing (or reinsuring) of an exempt contract as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect of issuing (or reinsuring) a contract which is not an exempt contract.

(C) Determinations made separately

For purposes of this subsection and section 954(i), the exempt insurance income and exempt contracts of a qualifying insurance company or any qualifying insurance company branch of such company shall be determined separately for such company and each such branch by taking into account—

(i) in the case of the qualifying insurance company, only items of income, deduction, gain, or loss, and activities of such company not properly allocable or attributable to any qualifying insurance company branch of such company, and

(ii) in the case of a qualifying insurance company branch, only items of income, deduction, gain, or loss and activities properly allocable or attributable to such branch.

(2) Exempt contract

(A) In general

The term “exempt contract” means an insurance or annuity contract issued or reinsured by a qualifying insurance company or qualifying insurance company branch in connection with property in, liability arising out of activity in, or the lives or health of residents of, a country other than the United States.

(B) Minimum home country income required

(i) In general

No contract of a qualifying insurance company or of a qualifying insurance company branch shall be treated as an exempt contract unless such company or branch derives more than 30 percent of its net written premiums from exempt contracts (determined without regard to this subparagraph)—

(I) which cover applicable home country risks, and

(II) with respect to which no policyholder, insured, annuitant, or beneficiary is a related person (as defined in section 954(d)(3)).

(ii) Applicable home country risks

The term “applicable home country risks” means risks in connection with

property in, liability arising out of activity in, or the lives or health of residents of, the home country of the qualifying insurance company or qualifying insurance company branch, as the case may be, issuing or reinsuring the contract covering the risks.

(C) Substantial activity requirements for cross border risks

A contract issued by a qualifying insurance company or qualifying insurance company branch which covers risks other than applicable home country risks (as defined in subparagraph (B)(ii)) shall not be treated as an exempt contract unless such company or branch, as the case may be—

(i) conducts substantial activity with respect to an insurance business in its home country, and

(ii) performs in its home country substantially all of the activities necessary to give rise to the income generated by such contract.

(3) Qualifying insurance company

The term “qualifying insurance company” means any controlled foreign corporation which—

(A) is subject to regulation as an insurance (or reinsurance) company by its home country, and is licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3)) in such home country,

(B) derives more than 50 percent of its aggregate net written premiums from the issuance or reinsurance by such controlled foreign corporation and each of its qualifying insurance company branches of contracts—

(i) covering applicable home country risks (as defined in paragraph (2)) of such corporation or branch, as the case may be, and

(ii) with respect to which no policyholder, insured, annuitant, or beneficiary is a related person (as defined in section 954(d)(3)),

except that in the case of a branch, such premiums shall only be taken into account to the extent such premiums are treated as earned by such branch in its home country for purposes of such country’s tax laws, and

(C) is engaged in the insurance business and would be subject to tax under subchapter L if it were a domestic corporation.

(4) Qualifying insurance company branch

The term “qualifying insurance company branch” means a qualified business unit (within the meaning of section 989(a)) of a controlled foreign corporation if—

(A) such unit is licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3)) in such home country, and

(B) such controlled foreign corporation is a qualifying insurance company, determined under paragraph (3) as if such unit were a qualifying insurance company branch.

(5) Life insurance or annuity contract

For purposes of this section and section 954, the determination of whether a contract issued by a controlled foreign corporation or a qualified business unit (within the meaning of section 989(a)) is a life insurance contract or an annuity contract shall be made without regard to sections 72(s), 101(f), 817(h), and 7702 if—

(A) such contract is regulated as a life insurance or annuity contract by the corporation’s or unit’s home country, and

(B) no policyholder, insured, annuitant, or beneficiary with respect to the contract is a United States person.

(6) Home country

For purposes of this subsection, except as provided in regulations—

(A) Controlled foreign corporation

The term “home country” means, with respect to a controlled foreign corporation, the country in which such corporation is created or organized.

(B) Qualified business unit

The term “home country” means, with respect to a qualified business unit (as defined in section 989(a)), the country in which the principal office of such unit is located and in which such unit is licensed, authorized, or regulated by the applicable insurance regulatory body to sell insurance, reinsurance, or annuity contracts to persons other than related persons (as defined in section 954(d)(3)) in such country.

(7) Anti-abuse rules

For purposes of applying this subsection and section 954(i)—

(A) the rules of section 954(h)(7) (other than subparagraph (B) thereof) shall apply,

(B) there shall be disregarded any item of income, gain, loss, or deduction of, or derived from, an entity which is not engaged in regular and continuous transactions with persons which are not related persons,

(C) there shall be disregarded any change in the method of computing reserves a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of this subsection or section 954(i),

(D) a contract of insurance or reinsurance shall not be treated as an exempt contract (and premiums from such contract shall not be taken into account for purposes of paragraph (2)(B) or (3)) if—

(i) any policyholder, insured, annuitant, or beneficiary is a resident of the United States and such contract was marketed to such resident and was written to cover a risk outside the United States, or

(ii) the contract covers risks located within and without the United States and the qualifying insurance company or qualifying insurance company branch does not maintain such contemporaneous

records, and file such reports, with respect to such contract as the Secretary may require,

(E) the Secretary may prescribe rules for the allocation of contracts (and income from contracts) among 2 or more qualifying insurance company branches of a qualifying insurance company in order to clearly reflect the income of such branches, and

(F) premiums from a contract shall not be taken into account for purposes of paragraph (2)(B) or (3) if such contract reinsures a contract issued or reinsured by a related person (as defined in section 954(d)(3)).

For purposes of subparagraph (D), the determination of where risks are located shall be made under the principles of section 953.

(8) Coordination with subsection (c)

In determining insurance income for purposes of subsection (c), exempt insurance income shall not include income derived from exempt contracts which cover risks other than applicable home country risks.

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection and section 954(i).

(10) Cross reference

For income exempt from foreign personal holding company income, see section 954(i).

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1008; amended Pub. L. 89-809, title I, §104(m)(2), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title II, §211(b)(13), July 18, 1984, 98 Stat. 755; Pub. L. 99-514, title XII, §1221(b)(1), (2), (3)(D), Oct. 22, 1986, 100 Stat. 2551, 2553; Pub. L. 100-647, title I, §1012(i)(1)-(3)(B), (4), (5), (7)-(9), (21), title VI, §6135(a), Nov. 10, 1988, 102 Stat. 3507-3509, 3511, 3721; Pub. L. 101-239, title VII, §7816(p), Dec. 19, 1989, 103 Stat. 2423; Pub. L. 105-277, div. J, title I, §1005(b)(1), (3), Oct. 21, 1998, 112 Stat. 2681-893, 2681-899; Pub. L. 106-170, title V, §503(a), (b), Dec. 17, 1999, 113 Stat. 1921; Pub. L. 107-147, title VI, §614(a)(1), Mar. 9, 2002, 116 Stat. 61; Pub. L. 109-222, title I, §103(a)(1), May 17, 2006, 120 Stat. 346; Pub. L. 110-343, div. C, title III, §303(a), Oct. 3, 2008, 122 Stat. 3866; Pub. L. 111-312, title VII, §750(a), (b), Dec. 17, 2010, 124 Stat. 3320; Pub. L. 112-240, title III, §322(a), Jan. 2, 2013, 126 Stat. 2332; Pub. L. 113-295, div. A, title I, §134(a), Dec. 19, 2014, 128 Stat. 4019; Pub. L. 114-113, div. Q, title I, §128(a), Dec. 18, 2015, 129 Stat. 3054; Pub. L. 115-97, title I, §§13511(b)(7), 13512(b)(8), 14212(b)(1)(D), (3), Dec. 22, 2017, 131 Stat. 2142, 2143, 2217.)

AMENDMENTS

2017—Subsec. (b)(1)(A). Pub. L. 115-97, §13512(b)(8), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: “The small life insurance company deduction.”

Subsec. (b)(1)(B). Pub. L. 115-97, §13512(b)(8), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Pub. L. 115-97, §13511(b)(7), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

“Section 805(a)(5) (relating to operations loss deduction).”

Subsec. (b)(1)(C). Pub. L. 115-97, §13512(b)(8), redesignated subpar. (C) as (B).

Subsec. (c)(1)(C). Pub. L. 115-97, §14212(b)(1)(D), substituted “section 951(a)(1)(A)” for “section 951(a)(1)(A)(i)”.

Subsec. (d)(4)(B)(iv)(II). Pub. L. 115-97, §14212(b)(3), struck out before period at end “or amounts referred to in clause (ii) or (iii) of section 951(a)(1)(A)”.

2015—Subsec. (e)(10), (11). Pub. L. 114-113 redesignated par. (11) as (10) and struck out former par. (10). Prior to amendment, text of par. (10) read as follows: “This subsection and section 954(i) shall apply only to taxable years of a foreign corporation beginning after December 31, 1998, and before January 1, 2015, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends. If this subsection does not apply to a taxable year of a foreign corporation beginning after December 31, 2014 (and taxable years of United States shareholders ending with or within such taxable year), then, notwithstanding the preceding sentence, subsection (a) shall be applied to such taxable years in the same manner as it would if the taxable year of the foreign corporation began in 1998.”

2014—Subsec. (e)(10). Pub. L. 113-295 substituted “January 1, 2015” for “January 1, 2014” and “December 31, 2014” for “December 31, 2013”.

2013—Subsec. (e)(10). Pub. L. 112-240 substituted “January 1, 2014” for “January 1, 2012” and “December 31, 2013” for “December 31, 2011”.

2010—Subsec. (e)(10). Pub. L. 111-312 substituted “January 1, 2012” for “January 1, 2010” and “December 31, 2011” for “December 31, 2009”.

2008—Subsec. (e)(10). Pub. L. 110-343 substituted “January 1, 2010” for “January 1, 2009” and “December 31, 2009” for “December 31, 2008”.

2006—Subsec. (e)(10). Pub. L. 109-222 substituted “January 1, 2009” for “January 1, 2007” and “December 31, 2008” for “December 31, 2006”.

2002—Subsec. (e)(10). Pub. L. 107-147 substituted “January 1, 2007” for “January 1, 2002” and “December 31, 2006” for “December 31, 2001”.

1999—Subsec. (e)(10). Pub. L. 106-170 substituted “taxable years” for “the first taxable year”, “January 1, 2002” for “January 1, 2000”, and “within which any such” for “within which such”, and inserted at end “If this subsection does not apply to a taxable year of a foreign corporation beginning after December 31, 2001 (and taxable years of United States shareholders ending with or within such taxable year), then, notwithstanding the preceding sentence, subsection (a) shall be applied to such taxable years in the same manner as it would if the taxable year of the foreign corporation began in 1998.”

1998—Subsec. (a). Pub. L. 105-277, §1005(b)(1)(A), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “For purposes of section 952(a)(1), the term ‘insurance income’ means any income which—

“(1) is attributable to the issuing (or reinsuring) of any insurance or annuity contract—

“(A) in connection with property in, liability arising out of activity in, or in connection with the lives or health of residents of, a country other than the country under the laws of which the controlled foreign corporation is created or organized, or

“(B) in connection with risks not described in subparagraph (A) as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect of issuing (or reinsuring) a contract described in subparagraph (A), and

“(2) would (subject to the modifications provided by paragraphs (1) and (2) of subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance company.”

Subsec. (b)(3), (4). Pub. L. 105-277, §1005(b)(3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (e). Pub. L. 105-277, § 1005(b)(1)(B), added subsec. (e).

1989—Subsec. (d)(3). Pub. L. 101-239 substituted “for purposes of section 1503(d) without regard to paragraph (2)(B) thereof” for “(as defined in section 1503(d))”.

1988—Subsec. (b)(1). Pub. L. 100-647, § 1012(i)(7)(A), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: “A corporation which would, if it were a domestic insurance corporation, be taxable under part II of subchapter L shall apply subsection (a) as if it were taxable under part III of subchapter L.”

Subsec. (b)(1)(A). Pub. L. 100-647, § 1012(i)(7)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: “The special life insurance company deduction and the small life insurance company deduction.”

Subsec. (b)(2) to (4). Pub. L. 100-647, § 1012(i)(7)(A), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out “(other than those taken into account under paragraph (3))” after “and deductions” in par. (3). Former par. (2) redesignated (1).

Subsec. (c)(1)(C). Pub. L. 100-647, § 1012(i)(2)(A), added subpar. (C).

Subsec. (c)(2). Pub. L. 100-647, § 1012(i)(3)(A), (4)(B), (5), substituted “insurance income (within the meaning of subsection (a) attributable” for “insurance income attributable”, “with respect to which the person (directly or indirectly) insured is” for “with respect to which the primary insured is”, and “related person” for “related person (within the meaning of section 954(d)(3))”.

Subsec. (c)(3)(A). Pub. L. 100-647, § 1012(i)(3)(B), (4)(B), substituted “persons who are (directly or indirectly) insured” for “persons who are the primary insured” and “to any such person” for “(within the meaning of section 954(d)(3) to any such primary insured”.

Subsec. (c)(3)(B). Pub. L. 100-647, § 1012(i)(8), substituted “related person insurance income (determined on a gross basis)” for “related person insurance income” and “its insurance income (as so determined)” for “its insurance income”.

Subsec. (c)(3)(C). Pub. L. 100-647, § 1012(i)(1)(A), (9), substituted “all benefits (other than with respect to section 884)” for “all benefits” and “granted by the United States under any treaty” for “under any income tax treaty” in cl. (i)(II) and inserted at end “An election under this subparagraph made for any taxable year shall not be effective if the corporation (or any predecessor thereof) was a disqualified corporation for the taxable year for which the election was made or for any prior taxable year beginning after 1986.”

Subsec. (c)(3)(D)(i). Pub. L. 100-647, § 1012(i)(1)(B), substituted “Period during which election in effect” for “Election irrevocable” in heading and amended text generally. Prior to amendment, text read as follows: “Any election under subparagraph (C) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.”

Subsec. (c)(3)(E). Pub. L. 100-647, § 1012(i)(1)(C), added subpar. (E).

Subsec. (c)(5). Pub. L. 100-647, § 1012(i)(2)(B), added par. (5) and redesignated former par. (5) as (6).

Subsec. (c)(6). Pub. L. 100-647, § 1012(i)(4)(A), added par. (6) and redesignated former par. (6) as (7).

Pub. L. 100-647, § 1012(i)(2)(B), redesignated former par. (5) as (6).

Subsec. (c)(7). Pub. L. 100-647, § 1012(i)(21), added par. (7) and struck out former par. (7) “Regulations”, which read as follows: “The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations preventing the avoidance of this subsection through cross insurance arrangements or otherwise.”

Pub. L. 100-647, § 1012(i)(4)(A), redesignated former par. (6) as (7).

Subsec. (c)(8). Pub. L. 100-647, § 1012(i)(21), added par. (8).

Subsec. (d). Pub. L. 100-647, § 6135(a), added subsec. (d). 1986—Pub. L. 99-514, § 1221(b)(3)(D), substituted “Insurance income” for “Income from insurance of United States risks” in section catchline.

Subsec. (a). Pub. L. 99-514, § 1221(b)(1), amended subsec. (a) generally, substituting provisions defining “insurance income” for former provisions defining “income derived from the insurance of United States risks”.

Subsec. (c). Pub. L. 99-514, § 1221(b)(2), added subsec. (c).

1984—Subsec. (a)(2). Pub. L. 98-369, § 211(b)(13)(D), substituted “and (2)” for “, (2), and (3)”.

Subsec. (b)(1). Pub. L. 98-369, § 211(b)(13)(A), redesignated par. (2) as (1). Former par. (1), which provided that the application of part I of subchapter L of this chapter, life insurance company taxable income was the gain from operations as defined in section 809(b), was struck out.

Subsec. (b)(2). Pub. L. 98-369, § 211(b)(13)(B), in amending par. (2) generally, substituted

“(A) The special life insurance company deduction and the small life insurance company deduction.

“(B) Section 805(a)(5) (relating to operations loss deduction).

“(C) Section 832(c)(5) (relating to certain capital losses).”

“(A) Section 809(d)(4) (operations loss deduction).

“(B) Section 809(d)(5) (certain nonparticipating contracts).

“(C) Section 809(d)(6) (group life, accident, and health insurance).”

and struck out

“(D) Section 809(d)(10) (small business deduction).

“(E) Section 817(b) (gain on property held on December 31, 1958, and certain substituted property acquired after 1958).

“(F) Section 832(c)(5) (certain capital losses).”

Pub. L. 98-369, § 211(b)(13)(A), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (b)(3). Pub. L. 98-369, § 211(b)(13)(A), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (b)(3)(A). Pub. L. 98-369, § 211(b)(13)(C)(i), substituted “section 803(a)(1)” for “section 809(c)(1)”.

Subsec. (b)(3)(B). Pub. L. 98-369, § 211(b)(13)(C)(ii), substituted “section 803(a)(2)” for “section 809(c)(2)”.

Subsec. (b)(3)(C). Pub. L. 98-369, § 211(b)(13)(C)(iii), substituted “section 805(a)(2)” for “section 809(d)(2)”.

Subsec. (b)(4), (5). Pub. L. 98-369, § 211(b)(13)(A), (E), redesignated par. (5) as (4) and substituted “paragraph (3)” for “paragraph (4)”. Former par. (4) redesignated (3).

1976—Subsec. (b)(5). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1966—Subsec. (b)(3)(F). Pub. L. 89-809 substituted “832(c)(5)” for “832(b)(5)”.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13511(b)(7) of Pub. L. 115-97 applicable to losses arising in taxable years beginning after Dec. 31, 2017, see section 13511(c) of Pub. L. 115-97, set out as a note under section 381 of this title.

Amendment by section 13512(b)(8) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 13512(c) of Pub. L. 115-97, set out as a note under section 453B of this title.

Amendment by section 14212(b)(1)(D), (3) of Pub. L. 115-97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14212(c) of Pub. L. 115-97, set out as a note under section 851 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title I, § 128(c), Dec. 18, 2015, 129 Stat. 3054, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2014, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.”

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. A, title I, §134(c), Dec. 19, 2014, 128 Stat. 4019, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2013, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.”

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-240, title III, §322(c), Jan. 2, 2013, 126 Stat. 2332, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2011, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.”

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title VII, §750(c), Dec. 17, 2010, 124 Stat. 3320, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.”

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-147, title VI, §614(c), Mar. 9, 2002, 116 Stat. 62, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years beginning after December 31, 2001.”

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-170, title V, §503(c), Dec. 17, 1999, 113 Stat. 1921, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years beginning after December 31, 1999.”

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1012(i)(3)(C), Nov. 10, 1988, 102 Stat. 3508, provided that: “The amendments made by this paragraph [amending this section] to the extent such amendments add the phrase ‘(directly or indirectly)’ shall apply only to taxable years beginning after December 31, 1987.”

Amendment by section 1012(i)(1), (2), (4), (5), (7)-(9), (21) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Pub. L. 100-647, title VI, §6135(b), Nov. 10, 1988, 102 Stat. 3723, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987.”

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of

Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

§ 954. Foreign base company income**(a) Foreign base company income**

For purposes of section 952(a)(2), the term “foreign base company income” means for any taxable year the sum of—

(1) the foreign personal holding company income for the taxable year (determined under subsection (c) and reduced as provided in subsection (b)(5)),

(2) the foreign base company sales income for the taxable year (determined under subsection (d) and reduced as provided in subsection (b)(5)), and

(3) the foreign base company services income for the taxable year (determined under subsection (e) and reduced as provided in subsection (b)(5)).

(b) Exclusion and special rules

(1) Repealed. Pub. L. 94-12, title VI, § 602(c)(1), Mar. 29, 1975, 89 Stat. 58]

(2) Repealed. Pub. L. 99-514, title XII, § 1221(c)(1), Oct. 22, 1986, 100 Stat. 2553]

(3) De minimis, etc., rules

For purposes of subsection (a) and section 953—

(A) De minimis rule

If the sum of foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year is less than the lesser of—

- (i) 5 percent of gross income, or
- (ii) \$1,000,000,

no part of the gross income for the taxable year shall be treated as foreign base company income or insurance income.

(B) Foreign base company income and insurance income in excess of 70 percent of gross income

If the sum of the foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year exceeds 70 percent of gross income, the entire gross income for the taxable year shall, subject to the provisions of paragraphs (4) and (5), be treated as foreign base company income or insurance income (whichever is appropriate).

(C) Gross insurance income

For purposes of subparagraphs (A) and (B), the term “gross insurance income” means any item of gross income taken into account in determining insurance income under section 953.

(4) Exception for certain income subject to high foreign taxes

For purposes of subsection (a) and section 953, foreign base company income and insur-

ance income shall not include any item of income received by a controlled foreign corporation if the taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11.

(5) Deductions to be taken into account

For purposes of subsection (a), the foreign personal holding company income, the foreign base company sales income, and the foreign base company services income shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income. Except to the extent provided in regulations prescribed by the Secretary, any interest which is paid or accrued by the controlled foreign corporation to any United States shareholder in such corporation (or any controlled foreign corporation related to such a shareholder) shall be allocated first to foreign personal holding company income which is passive income (within the meaning of section 904(d)(2)) of such corporation to the extent thereof. The Secretary may, by regulations, provide that the preceding sentence shall apply also to interest paid or accrued to other persons.

(c) Foreign personal holding company income

(1) In general

For purposes of subsection (a)(1), the term “foreign personal holding company income” means the portion of the gross income which consists of:

(A) Dividends, etc.

Dividends, interest, royalties, rents, and annuities.

(B) Certain property transactions

The excess of gains over losses from the sale or exchange of property—

- (i) which gives rise to income described in subparagraph (A) (after application of paragraph (2)(A)) other than property which gives rise to income not treated as foreign personal holding company income by reason of subsection (h) or (i) for the taxable year,
- (ii) which is an interest in a trust, partnership, or REMIC, or
- (iii) which does not give rise to any income.

Gains and losses from the sale or exchange of any property which, in the hands of the controlled foreign corporation, is property described in section 1221(a)(1) shall not be taken into account under this subparagraph.

(C) Commodities transactions

The excess of gains over losses from transactions (including futures, forward, and similar transactions) in any commodities. This subparagraph shall not apply to gains or losses which—

- (i) arise out of commodity hedging transactions (as defined in paragraph (5)(A)),
- (ii) are active business gains or losses from the sale of commodities, but only if

substantially all of the controlled foreign corporation’s commodities are property described in paragraph (1), (2), or (8) of section 1221(a), or

- (iii) are foreign currency gains or losses (as defined in section 988(b)) attributable to any section 988 transactions.

(D) Foreign currency gains

The excess of foreign currency gains over foreign currency losses (as defined in section 988(b)) attributable to any section 988 transactions. This subparagraph shall not apply in the case of any transaction directly related to the business needs of the controlled foreign corporation.

(E) Income equivalent to interest

Any income equivalent to interest, including income from commitment fees (or similar amounts) for loans actually made.

(F) Income from notional principal contracts

(i) In general

Net income from notional principal contracts.

(ii) Coordination with other categories of foreign personal holding company income

Any item of income, gain, deduction, or loss from a notional principal contract entered into for purposes of hedging any item described in any preceding subparagraph shall not be taken into account for purposes of this subparagraph but shall be taken into account under such other subparagraph.

(G) Payments in lieu of dividends

Payments in lieu of dividends which are made pursuant to an agreement to which section 1058 applies.

(H) Personal service contracts

(i) Amounts received under a contract under which the corporation is to furnish personal services if—

- (I) some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or
- (II) the individual who is to perform the services is designated (by name or by description) in the contract, and

(ii) amounts received from the sale or other disposition of such a contract.

This subparagraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(2) Exception for certain amounts

(A) Rents and royalties derived in active business

Foreign personal holding company income shall not include rents and royalties which

are derived in the active conduct of a trade or business and which are received from a person other than a related person (within the meaning of subsection (d)(3)). For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.

(B) Certain export financing

Foreign personal holding company income shall not include any interest which is derived in the conduct of a banking business and which is export financing interest (as defined in section 904(d)(2)(G)).

(C) Exception for dealers

Except as provided by regulations, in the case of a regular dealer in property which is property described in paragraph (1)(B), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities), there shall not be taken into account in computing foreign personal holding company income—

(i) any item of income, gain, deduction, or loss (other than any item described in subparagraph (A), (E), or (G) of paragraph (1)) from any transaction (including hedging transactions and transactions involving physical settlement) entered into in the ordinary course of such dealer's trade or business as such a dealer, and

(ii) if such dealer is a dealer in securities (within the meaning of section 475), any interest or dividend or equivalent amount described in subparagraph (E) or (G) of paragraph (1) from any transaction (including any hedging transaction or transaction described in section 956(c)(2)(I)) entered into in the ordinary course of such dealer's trade or business as such a dealer in securities, but only if the income from the transaction is attributable to activities of the dealer in the country under the laws of which the dealer is created or organized (or in the case of a qualified business unit described in section 989(a), is attributable to activities of the unit in the country in which the unit both maintains its principal office and conducts substantial business activity).

(3) Certain income received from related persons

(A) In general

Except as provided in subparagraph (B), the term "foreign personal holding company income" does not include—

(i) dividends and interest received from a related person which (I) is a corporation created or organized under the laws of the same foreign country under the laws of which the controlled foreign corporation is created or organized, and (II) has a substantial part of its assets used in its trade or business located in such same foreign country, and

(ii) rents and royalties received from a corporation which is a related person for the use of, or the privilege of using, property within the country under the laws of which the controlled foreign corporation is created or organized.

To the extent provided in regulations, payments made by a partnership with 1 or more corporate partners shall be treated as made by such corporate partners in proportion to their respective interests in the partnership.

(B) Exception not to apply to items which reduce subpart F income

Subparagraph (A) shall not apply in the case of any interest, rent, or royalty to the extent such interest, rent, or royalty reduces the payor's subpart F income or creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation.

(C) Exception for certain dividends

Subparagraph (A)(i) shall not apply to any dividend with respect to any stock which is attributable to earnings and profits of the distributing corporation accumulated during any period during which the person receiving such dividend did not hold such stock either directly, or indirectly through a chain of one or more subsidiaries each of which meets the requirements of subparagraph (A)(i).

(4) Look-thru rule for certain partnership sales

(A) In general

In the case of any sale by a controlled foreign corporation of an interest in a partnership with respect to which such corporation is a 25-percent owner, such corporation shall be treated for purposes of this subsection as selling the proportionate share of the assets of the partnership attributable to such interest. The Secretary shall prescribe such regulations as may be appropriate to prevent abuse of the purposes of this paragraph, including regulations providing for coordination of this paragraph with the provisions of subchapter K.

(B) 25-percent owner

For purposes of this paragraph, the term "25-percent owner" means a controlled foreign corporation which owns directly 25 percent or more of the capital or profits interest in a partnership. For purposes of the preceding sentence, if a controlled foreign corporation is a shareholder or partner of a corporation or partnership, the controlled foreign corporation shall be treated as owning directly its proportionate share of any such capital or profits interest held directly or indirectly by such corporation or partnership. If a controlled foreign corporation is treated as owning a capital or profits interest in a partnership under constructive ownership rules similar to the rules of section 958(b), the controlled foreign corporation shall be treated as owning such interest directly for purposes of this subparagraph.

(5) Definition and special rules relating to commodity transactions**(A) Commodity hedging transactions**

For purposes of paragraph (1)(C)(i), the term “commodity hedging transaction” means any transaction with respect to a commodity if such transaction—

(i) is a hedging transaction as defined in section 1221(b)(2), determined—

(I) without regard to subparagraph (A)(ii) thereof,

(II) by applying subparagraph (A)(i) thereof by substituting “ordinary property or property described in section 1231(b)” for “ordinary property”, and

(III) by substituting “controlled foreign corporation” for “taxpayer” each place it appears, and

(ii) is clearly identified as such in accordance with section 1221(a)(7).

(B) Treatment of dealer activities under paragraph (1)(C)

Commodities with respect to which gains and losses are not taken into account under paragraph (2)(C) in computing a controlled foreign corporation’s foreign personal holding company income shall not be taken into account in applying the substantially all test under paragraph (1)(C)(ii) to such corporation.

(C) Regulations

The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of paragraph (1)(C) in the case of transactions involving related parties.

(6) Look-thru rule for related controlled foreign corporations**(A) In general**

For purposes of this subsection, dividends, interest, rents, and royalties received or accrued from a controlled foreign corporation which is a related person shall not be treated as foreign personal holding company income to the extent attributable or properly allocable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which is neither subpart F income nor income treated as effectively connected with the conduct of a trade or business in the United States. For purposes of this subparagraph, interest shall include factoring income which is treated as income equivalent to interest for purposes of paragraph (1)(E). The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including such regulations as may be necessary or appropriate to prevent the abuse of the purposes of this paragraph.

(B) Exception

Subparagraph (A) shall not apply in the case of any interest, rent, or royalty to the extent such interest, rent, or royalty creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation.

(C) Application

Subparagraph (A) shall apply to taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2020, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

(d) Foreign base company sales income**(1) In general**

For purposes of subsection (a)(2), the term “foreign base company sales income” means income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with the purchase of personal property from a related person and its sale to any person, the sale of personal property to any person on behalf of a related person, the purchase of personal property from any person and its sale to a related person, or the purchase of personal property from any person on behalf of a related person where—

(A) the property which is purchased (or in the case of property sold on behalf of a related person, the property which is sold) is manufactured, produced, grown, or extracted outside the country under the laws of which the controlled foreign corporation is created or organized, and

(B) the property is sold for use, consumption, or disposition outside such foreign country, or, in the case of property purchased on behalf of a related person, is purchased for use, consumption, or disposition outside such foreign country.

For purposes of this subsection, personal property does not include agricultural commodities which are not grown in the United States in commercially marketable quantities.

(2) Certain branch income

For purposes of determining foreign base company sales income in situations in which the carrying on of activities by a controlled foreign corporation through a branch or similar establishment outside the country of incorporation of the controlled foreign corporation has substantially the same effect as if such branch or similar establishment were a wholly owned subsidiary corporation deriving such income, under regulations prescribed by the Secretary the income attributable to the carrying on of such activities of such branch or similar establishment shall be treated as income derived by a wholly owned subsidiary of the controlled foreign corporation and shall constitute foreign base company sales income of the controlled foreign corporation.

(3) Related person defined

For purposes of this section, a person is a related person with respect to a controlled foreign corporation, if—

(A) such person is an individual, corporation, partnership, trust, or estate which controls, or is controlled by, the controlled foreign corporation, or

(B) such person is a corporation, partnership, trust, or estate which is controlled by the same person or persons which control the controlled foreign corporation.

For purposes of the preceding sentence, control means, with respect to a corporation, the ownership, directly or indirectly, of stock possessing more than 50 percent of the total voting power of all classes of stock entitled to vote or of the total value of stock of such corporation. In the case of a partnership, trust, or estate, control means the ownership, directly or indirectly, of more than 50 percent (by value) of the beneficial interests in such partnership, trust, or estate. For purposes of this paragraph, rules similar to the rules of section 958 shall apply.

(4) Special rule for certain timber products

For purposes of subsection (a)(2), the term “foreign base company sales income” includes any income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with—

(A) the sale of any unprocessed timber referred to in section 865(b), or

(B) the milling of any such timber outside the United States.

Subpart G shall not apply to any amount treated as subpart F income by reason of this paragraph.

(e) Foreign base company services income

(1) In general

For purposes of subsection (a)(3), the term “foreign base company services income” means income (whether in the form of compensation, commissions, fees, or otherwise) derived in connection with the performance of technical, managerial, engineering, architectural, scientific, skilled, industrial, commercial, or like services which—

(A) are performed for or on behalf of any related person (within the meaning of subsection (d)(3)), and

(B) are performed outside the country under the laws of which the controlled foreign corporation is created or organized.

(2) Exception

Paragraph (1) shall not apply to income derived in connection with the performance of services which are directly related to—

(A) the sale or exchange by the controlled foreign corporation of property manufactured, produced, grown, or extracted by it and which are performed before the time of the sale or exchange, or

(B) an offer or effort to sell or exchange such property.

Paragraph (1) shall also not apply to income which is exempt insurance income (as defined in section 953(e)) or which is not treated as foreign personal holding income by reason of subsection (c)(2)(C)(ii), (h), or (i).

[(f) Repealed. Pub. L. 108-357, title IV, § 415(a)(2), Oct. 22, 2004, 118 Stat. 1511]

[(g) Repealed. Pub. L. 115-97, title I, § 14211(b)(3), Dec. 22, 2017, 131 Stat. 2217]

(h) Special rule for income derived in the active conduct of banking, financing, or similar businesses

(1) In general

For purposes of subsection (c)(1), foreign personal holding company income shall not in-

clude qualified banking or financing income of an eligible controlled foreign corporation.

(2) Eligible controlled foreign corporation

For purposes of this subsection—

(A) In general

The term “eligible controlled foreign corporation” means a controlled foreign corporation which—

(i) is predominantly engaged in the active conduct of a banking, financing, or similar business, and

(ii) conducts substantial activity with respect to such business.

(B) Predominantly engaged

A controlled foreign corporation shall be treated as predominantly engaged in the active conduct of a banking, financing, or similar business if—

(i) more than 70 percent of the gross income of the controlled foreign corporation is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons,

(ii) it is engaged in the active conduct of a banking business and is an institution licensed to do business as a bank in the United States (or is any other corporation not so licensed which is specified by the Secretary in regulations), or

(iii) it is engaged in the active conduct of a securities business and is registered as a securities broker or dealer under section 15(a) of the Securities Exchange Act of 1934 or is registered as a Government securities broker or dealer under section 15C(a) of such Act (or is any other corporation not so registered which is specified by the Secretary in regulations).

(3) Qualified banking or financing income

For purposes of this subsection—

(A) In general

The term “qualified banking or financing income” means income of an eligible controlled foreign corporation which—

(i) is derived in the active conduct of a banking, financing, or similar business by—

(I) such eligible controlled foreign corporation, or

(II) a qualified business unit of such eligible controlled foreign corporation,

(ii) is derived from one or more transactions—

(I) with customers located in a country other than the United States, and

(II) substantially all of the activities in connection with which are conducted directly by the corporation or unit in its home country, and

(iii) is treated as earned by such corporation or unit in its home country for purposes of such country’s tax laws.

(B) Limitation on nonbanking and nonsecurities businesses

No income of an eligible controlled foreign corporation not described in clause (ii) or

(iii) of paragraph (2)(B) (or of a qualified business unit of such corporation) shall be treated as qualified banking or financing income unless more than 30 percent of such corporation's or unit's gross income is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons and which are located within such corporation's or unit's home country.

(C) Substantial activity requirement for cross border income

The term "qualified banking or financing income" shall not include income derived from 1 or more transactions with customers located in a country other than the home country of the eligible controlled foreign corporation or a qualified business unit of such corporation unless such corporation or unit conducts substantial activity with respect to a banking, financing, or similar business in its home country.

(D) Determinations made separately

For purposes of this paragraph, the qualified banking or financing income of an eligible controlled foreign corporation and each qualified business unit of such corporation shall be determined separately for such corporation and each such unit by taking into account—

- (i) in the case of the eligible controlled foreign corporation, only items of income, deduction, gain, or loss and activities of such corporation not properly allocable or attributable to any qualified business unit of such corporation, and
- (ii) in the case of a qualified business unit, only items of income, deduction, gain, or loss and activities properly allocable or attributable to such unit.

(E) Direct conduct of activities

For purposes of subparagraph (A)(ii)(II), an activity shall be treated as conducted directly by an eligible controlled foreign corporation or qualified business unit in its home country if the activity is performed by employees of a related person and—

- (i) the related person is an eligible controlled foreign corporation the home country of which is the same as the home country of the corporation or unit to which subparagraph (A)(ii)(II) is being applied,
- (ii) the activity is performed in the home country of the related person, and
- (iii) the related person is compensated on an arm's-length basis for the performance of the activity by its employees and such compensation is treated as earned by such person in its home country for purposes of the home country's tax laws.

(4) Lending or finance business

For purposes of this subsection, the term "lending or finance business" means the business of—

- (A) making loans,
- (B) purchasing or discounting accounts receivable, notes, or installment obligations,

(C) engaging in leasing (including entering into leases and purchasing, servicing, and disposing of leases and leased assets),

(D) issuing letters of credit or providing guarantees,

(E) providing charge and credit card services, or

(F) rendering services or making facilities available in connection with activities described in subparagraphs (A) through (E) carried on by—

- (i) the corporation (or qualified business unit) rendering services or making facilities available, or
- (ii) another corporation (or qualified business unit of a corporation) which is a member of the same affiliated group (as defined in section 1504, but determined without regard to section 1504(b)(3)).

(5) Other definitions

For purposes of this subsection—

(A) Customer

The term "customer" means, with respect to any controlled foreign corporation or qualified business unit, any person which has a customer relationship with such corporation or unit and which is acting in its capacity as such.

(B) Home country

Except as provided in regulations—

(i) Controlled foreign corporation

The term "home country" means, with respect to any controlled foreign corporation, the country under the laws of which the corporation was created or organized.

(ii) Qualified business unit

The term "home country" means, with respect to any qualified business unit, the country in which such unit maintains its principal office.

(C) Located

The determination of where a customer is located shall be made under rules prescribed by the Secretary.

(D) Qualified business unit

The term "qualified business unit" has the meaning given such term by section 989(a).

(E) Related person

The term "related person" has the meaning given such term by subsection (d)(3).

(6) Coordination with exception for dealers

Paragraph (1) shall not apply to income described in subsection (c)(2)(C)(ii) of a dealer in securities (within the meaning of section 475) which is an eligible controlled foreign corporation described in paragraph (2)(B)(iii).

(7) Anti-abuse rules

For purposes of applying this subsection and subsection (c)(2)(C)(ii)—

(A) there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions one of the principal purposes of which is qualifying income or gain for the exclusion

under this section, including any transaction or series of transactions a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of such exclusion through the application of this subsection.

(B) there shall be disregarded any item of income, gain, loss, or deduction of an entity which is not engaged in regular and continuous transactions with customers which are not related persons,

(C) there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions utilizing, or doing business with—

(i) one or more entities in order to satisfy any home country requirement under this subsection, or

(ii) a special purpose entity or arrangement, including a securitization, financing, or similar entity or arrangement,

if one of the principal purposes of such transaction or series of transactions is qualifying income or gain for the exclusion under this subsection, and

(D) a related person, an officer, a director, or an employee with respect to any controlled foreign corporation (or qualified business unit) which would otherwise be treated as a customer of such corporation or unit with respect to any transaction shall not be so treated if a principal purpose of such transaction is to satisfy any requirement of this subsection.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, subsection (c)(1)(B)(i), subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2).

(i) Special rule for income derived in the active conduct of insurance business

(1) In general

For purposes of subsection (c)(1), foreign personal holding company income shall not include qualified insurance income of a qualifying insurance company.

(2) Qualified insurance income

The term “qualified insurance income” means income of a qualifying insurance company which is—

(A) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from the investments made by a qualifying insurance company or a qualifying insurance company branch of its reserves allocable to exempt contracts or of 80 percent of its unearned premiums from exempt contracts (as both are determined in the manner prescribed under paragraph (4)), or

(B) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from investments made by a qualifying insurance company or a qualifying insurance company branch of an amount of its assets allocable to exempt contracts equal to—

(i) in the case of property, casualty, or health insurance contracts, one-third of its premiums earned on such insurance contracts during the taxable year (as defined in section 832(b)(4)), and

(ii) in the case of life insurance or annuity contracts, 10 percent of the reserves described in subparagraph (A) for such contracts.

(3) Principles for determining insurance income

Except as provided by the Secretary, for purposes of subparagraphs (A) and (B) of paragraph (2)—

(A) in the case of any contract which is a separate account-type contract (including any variable contract not meeting the requirements of section 817), income credited under such contract shall be allocable only to such contract, and

(B) income not allocable under subparagraph (A) shall be allocated ratably among contracts not described in subparagraph (A).

(4) Methods for determining unearned premiums and reserves

For purposes of paragraph (2)(A)—

(A) Property and casualty contracts

The unearned premiums and reserves of a qualifying insurance company or a qualifying insurance company branch with respect to property, casualty, or health insurance contracts shall be determined using the same methods and interest rates which would be used if such company or branch were subject to tax under subchapter L, except that—

(i) the interest rate determined for the functional currency of the company or branch, and which, except as provided by the Secretary, is calculated in the same manner as the Federal mid-term rate under section 1274(d), shall be substituted for the applicable Federal interest rate, and

(ii) such company or branch shall use the appropriate foreign loss payment pattern.

(B) Life insurance and annuity contracts

(i) In general

Except as provided in clause (ii), the amount of the reserve of a qualifying insurance company or qualifying insurance company branch for any life insurance or annuity contract shall be equal to the greater of—

(I) the net surrender value of such contract (as defined in section 807(e)(1)(A)), or

(II) the reserve determined under paragraph (5).

(ii) Ruling request, etc.

The amount of the reserve under clause (i) shall be the foreign statement reserve for the contract (less any catastrophe, deficiency, equalization, or similar reserves), if, pursuant to a ruling request submitted by the taxpayer or as provided in published guidance, the Secretary determines that

the factors taken into account in determining the foreign statement reserve provide an appropriate means of measuring income.

(C) Limitation on reserves

In no event shall the reserve determined under this paragraph for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining foreign statement reserves (less any catastrophe, deficiency, equalization, or similar reserves).

(5) Amount of reserve

The amount of the reserve determined under this paragraph with respect to any contract shall be determined in the same manner as it would be determined if the qualifying insurance company or qualifying insurance company branch were subject to tax under subchapter L, except that in applying such subchapter—

(A) the interest rate determined for the functional currency of the company or branch, and which, except as provided by the Secretary, is calculated in the same manner as the Federal mid-term rate under section 1274(d), shall be substituted for the applicable Federal interest rate,

(B) the highest assumed interest rate permitted to be used in determining foreign statement reserves shall apply, and

(C) tables for mortality and morbidity which reasonably reflect the current mortality and morbidity risks in the company's or branch's home country shall be substituted for the mortality and morbidity tables otherwise used for such subchapter.

The Secretary may provide that the interest rate and mortality and morbidity tables of a qualifying insurance company may be used for 1 or more of its qualifying insurance company branches when appropriate.

(6) Definitions

For purposes of this subsection, any term used in this subsection which is also used in section 953(e) shall have the meaning given such term by section 953.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1009; amended Pub. L. 91-172, title IX, §909(a), Dec. 30, 1969, 83 Stat. 718; Pub. L. 94-12, title VI, §602(b), (c)(1), (2), (d)(1), (e), Mar. 29, 1975, 89 Stat. 58, 60, 64; Pub. L. 94-455, title X, §§1023(a), 1024(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1620, 1834; Pub. L. 97-248, title II, §212(a)–(e), Sept. 3, 1982, 96 Stat. 451, 452; Pub. L. 98-369, div. A, title I, §137(a), title VII, §712(f), July 18, 1984, 98 Stat. 672, 947; Pub. L. 99-514, title XII, §§1201(c), 1221(a)(1), (b)(3)(B), (c)(1)–(3)(A), (d), (e), 1223(a), title XVIII, §1810(k), Oct. 22, 1986, 100 Stat. 2525, 2549, 2553, 2557, 2830; Pub. L. 100-647, title I, §§1012(i)(12), (14)(A), (18), (20), (25)(B), 1018(u)(38), Nov. 10, 1988, 102 Stat. 3509-3512, 3592; Pub. L. 101-239, title VII, §7811(i)(3), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 103-66, title XIII, §§13233(a)(1), 13235(a)(3), (b), 13239(d), Aug. 10, 1993, 107 Stat. 502, 504, 505, 509; Pub. L. 104-188, title I, §1704(t)(25), Aug. 20, 1996, 110 Stat. 1888; Pub. L. 105-34, title X, §1051(a),

(b), title XI, §1175(a), (b), Aug. 5, 1997, 111 Stat. 940, 990, 993; Pub. L. 105-277, div. J, title I, §1005(a), (b)(2), (c)–(e), title IV, §4003(j), Oct. 21, 1998, 112 Stat. 2681-890, 2681-897, 2681-899, 2681-900, 2681-910; Pub. L. 106-170, title V, §§503(a), 532(c)(2)(Q), Dec. 17, 1999, 113 Stat. 1921, 1931; Pub. L. 107-147, title IV, §417(24)(B)(ii), title VI, §614(a)(2), (b)(1), Mar. 9, 2002, 116 Stat. 57, 61; Pub. L. 108-357, title IV, §§412(a), 413(b)(2), 414(a)–(c), 415(a), (b), (c)(2), 416(a), Oct. 22, 2004, 118 Stat. 1505, 1506, 1510, 1511; Pub. L. 109-135, title IV, §§403(m), 412(l), (mm), Dec. 21, 2005, 119 Stat. 2626, 2639; Pub. L. 109-222, title I, §103(a)(2), (b)(1), May 17, 2006, 120 Stat. 346; Pub. L. 109-432, div. A, title IV, §426(a)(1), Dec. 20, 2006, 120 Stat. 2974; Pub. L. 110-172, §§4(a), 11(a)(19), (20), (g)(15)(B), Dec. 29, 2007, 121 Stat. 2475, 2486, 2491; Pub. L. 110-343, div. C, title III, §§303(b), 304(a), Oct. 3, 2008, 122 Stat. 3866, 3867; Pub. L. 111-312, title VII, §§750(a), 751(a), Dec. 17, 2010, 124 Stat. 3320, 3321; Pub. L. 112-240, title III, §§322(b), 323(a), Jan. 2, 2013, 126 Stat. 2332, 2333; Pub. L. 113-295, div. A, title I, §§134(b), 135(a), Dec. 19, 2014, 128 Stat. 4019; Pub. L. 114-113, div. Q, title I, §§128(b), 144(a), Dec. 18, 2015, 129 Stat. 3054, 3065; Pub. L. 115-97, title I, §§13517(b)(5), 14211(a), (b)(2), (3), Dec. 22, 2017, 131 Stat. 2147, 2216, 2217.)

REFERENCES IN TEXT

Sections 15(a) and 15C(a) of the Securities Exchange Act of 1934, referred to in subsec. (h)(2)(B)(iii), are classified to sections 780(a) and 780-5(a), respectively, of Title 15, Commerce and Trade.

AMENDMENTS

2017—Subsec. (a)(5). Pub. L. 115-97, §14211(a), struck out par. (5) which read as follows: “the foreign base company oil related income for the taxable year (determined under subsection (g) and reduced as provided in subsection (b)(5)).”

Subsec. (b)(4). Pub. L. 115-97, §14211(b)(2)(A), struck out at end “The preceding sentence shall not apply to foreign base company oil-related income described in subsection (a)(5).”

Subsec. (b)(5). Pub. L. 115-97, §14211(b)(2)(B), which directed substitution of “and the foreign base company services income” for “the foreign base company services income, and the foreign base company oil related income”, was executed by making the substitution for “the foreign base company services income., and the foreign base company oil related income” to reflect the probable intent of Congress.

Subsec. (b)(6). Pub. L. 115-97, §14211(b)(2)(C), struck out par. (6). Text read as follows: “Income of a corporation which is foreign base company oil related income shall not be considered foreign base company income of such corporation under paragraph (2), or (3) of subsection (a).”

Subsec. (g). Pub. L. 115-97, §14211(b)(3), struck out subsec. (g) which related to foreign base company oil related income.

Subsec. (i)(5)(B). Pub. L. 115-97, §13517(b)(5), substituted “shall apply,” for “shall be substituted for the prevailing State assumed interest rate.”

2015—Subsec. (c)(6)(C). Pub. L. 114-113, §144(a), substituted “January 1, 2020” for “January 1, 2015”.

Subsec. (h)(9). Pub. L. 114-113, §128(b), struck out par. (9). Text read as follows: “This subsection, subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2) shall apply only to taxable years of a foreign corporation beginning after December 31, 1998, and before January 1, 2015, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.”

2014—Subsec. (c)(6)(C). Pub. L. 113-295, §135(a), substituted “January 1, 2015” for “January 1, 2014”.

Subsec. (h)(9). Pub. L. 113-295, § 134(b), substituted “January 1, 2015” for “January 1, 2014”.

2013—Subsec. (c)(6)(C). Pub. L. 112-240, § 323(a), substituted “January 1, 2014” for “January 1, 2012”.

Subsec. (h)(9). Pub. L. 112-240, § 322(b), substituted “January 1, 2014” for “January 1, 2012”.

2010—Subsec. (c)(6)(C). Pub. L. 111-312, § 751(a), substituted “January 1, 2012” for “January 1, 2010”.

Subsec. (h)(9). Pub. L. 111-312, § 750(a), substituted “January 1, 2012” for “January 1, 2010”.

2008—Subsec. (c)(6)(C). Pub. L. 110-343, § 304(a), substituted “January 1, 2010” for “January 1, 2009”.

Subsec. (h)(9). Pub. L. 110-343, § 303(b), substituted “January 1, 2010” for “January 1, 2009”.

2007—Subsec. (c)(1)(F). Pub. L. 110-172, § 11(a)(19), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Any item of income, gain, deduction, or loss from a notional principal contract entered into for purposes of hedging any item described in any preceding subparagraph shall not be taken into account for purposes of this subparagraph but shall be taken into account under such other subparagraph.”

Subsec. (c)(1)(H), (I). Pub. L. 110-172, § 11(a)(20), redesignated subpar. (I) as (H).

Subsec. (c)(2)(C)(ii). Pub. L. 110-172, § 11(g)(15)(B), substituted “section 956(c)(2)(I)” for “section 956(c)(2)(J)”.

Subsec. (c)(6)(B), (C). Pub. L. 110-172, § 4(a), added subpar. (B) and redesignated former subpar. (B) as (C).

2006—Subsec. (c)(6). Pub. L. 109-222, § 103(b)(1), added par. (6).

Subsec. (c)(6)(A). Pub. L. 109-432, in first sentence, substituted “which is neither subpart F income nor income treated as effectively connected with the conduct of a trade or business in the United States” for “which is not subpart F income” and, in last sentence, substituted “The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including such regulations as may be necessary or appropriate to prevent the abuse of the purposes of this paragraph” for “The Secretary shall prescribe such regulations as may be appropriate to prevent the abuse of the purposes of this paragraph”.

Subsec. (h)(9). Pub. L. 109-222, § 103(a)(2), substituted “January 1, 2009” for “January 1, 2007”.

2005—Subsec. (c)(1)(C)(i). Pub. L. 109-135, § 412(l), substituted “paragraph (5)(A)” for “paragraph (4)(A)”.

Subsec. (c)(1)(F). Pub. L. 109-135, § 412(mm), struck out “Net income from notional principal contracts.” before “Any item of income”.

Subsec. (c)(4)(B). Pub. L. 109-135, § 403(m), inserted at end “If a controlled foreign corporation is treated as owning a capital or profits interest in a partnership under constructive ownership rules similar to the rules of section 958(b), the controlled foreign corporation shall be treated as owning such interest directly for purposes of this subparagraph.”

2004—Subsec. (a)(4). Pub. L. 108-357, § 415(a)(1), struck out par. (4) which read as follows: “the foreign base company shipping income for the taxable year (determined under subsection (f) and reduced as provided in subsection (b)(5)), and”.

Subsec. (b)(5). Pub. L. 108-357, § 415(c)(2)(A), struck out “the foreign base company shipping income,” after “the foreign base company services income.”.

Subsec. (b)(6) to (8). Pub. L. 108-357, § 415(c)(2)(B), (C), redesignated par. (8) as (6) and struck out former pars. (6) and (7) which set forth special rules and special exclusion for foreign base company shipping income.

Subsec. (c)(1)(C)(i), (ii). Pub. L. 108-357, § 414(a), amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

“(i) arise out of bona fide hedging transactions reasonably necessary to the conduct of any business by a producer, processor, merchant, or handler of a commodity in the manner in which such business is customarily and usually conducted by others,

“(ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation’s business is as an active

producer, processor, merchant, or handler of commodities, or”.

Subsec. (c)(1)(I). Pub. L. 108-357, § 413(b)(2), added subpar. (I).

Subsec. (c)(2)(A). Pub. L. 108-357, § 415(b), inserted at end “For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.”

Subsec. (c)(2)(C)(i). Pub. L. 108-357, § 414(c), inserted “and transactions involving physical settlement” after “(including hedging transactions)”.

Subsec. (c)(4). Pub. L. 108-357, § 412(a), added par. (4).

Subsec. (c)(5). Pub. L. 108-357, § 414(b), added par. (5).

Subsec. (f). Pub. L. 108-357, § 415(a)(2), struck out subsec. (f) which defined “foreign base company shipping income” for purposes of subsec. (a)(4).

Subsec. (h)(3)(E). Pub. L. 108-357, § 416(a), added subpar. (E).

2002—Subsec. (c)(1)(B). Pub. L. 107-147, § 417(24)(B)(ii), which directed the amendment of Pub. L. 106-170, § 532(c)(2)(Q), was executed to that section as if the amendment were retroactive to the effective date of the amendment by Pub. L. 106-170 to reflect the probable intent of Congress. See 1999 Amendment note below.

Subsec. (h)(9). Pub. L. 107-147, § 614(a)(2), substituted “January 1, 2007” for “January 1, 2002”.

Subsec. (i)(4)(B). Pub. L. 107-147, § 614(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The amount of the reserve of a qualifying insurance company or qualifying insurance company branch for any life insurance or annuity contract shall be equal to the greater of—

“(i) the net surrender value of such contract (as defined in section 807(e)(1)(A)), or

“(ii) the reserve determined under paragraph (5).”

1999—Subsec. (c)(1)(B). Pub. L. 106-170, § 532(c)(2)(Q), as amended by Pub. L. 107-147, § 417(24)(B)(ii), substituted “section 1221(a)(1)” for “section 1221(1)” in concluding provisions.

Subsec. (h)(9). Pub. L. 106-170, § 503(a), substituted “taxable years” for “the first taxable year”, “January 1, 2002” for “January 1, 2000”, and “within which any such” for “within which such”.

1998—Subsec. (c)(1)(B)(i). Pub. L. 105-277, § 1005(e), inserted “other than property which gives rise to income not treated as foreign personal holding company income by reason of subsection (h) or (i) for the taxable year” before comma at end.

Subsec. (c)(2)(C). Pub. L. 105-277, § 1005(c), amended heading and text of subpar. (C), generally. Prior to amendment, text read as follows: “Except as provided in subparagraph (A), (E), or (G) of paragraph (1) or by regulations, in the case of a regular dealer in property (within the meaning of paragraph (1)(B)), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities), there shall not be taken into account in computing foreign personal holding income any item of income, gain, deduction, or loss from any transaction (including hedging transactions) entered into in the ordinary course of such dealer’s trade or business as such a dealer.”

Subsec. (e)(2). Pub. L. 105-277, § 1005(d), inserted “or” at end of subpar. (A), substituted a period for “, or” at end of subpar. (B), and inserted concluding provisions.

Subsec. (e)(2)(C). Pub. L. 105-277, § 4003(j), substituted “(h)(9)” for “(h)(8)”.

Pub. L. 105-277, § 1005(d), struck out subpar. (C) which read as follows: “in the case of taxable years described in subsection (h)(9), the active conduct by a controlled foreign corporation of a banking, financing, insurance, or similar business, but only if the corporation is predominantly engaged in the active conduct of such business (within the meaning of subsection (h)(3)) or is a qualifying insurance company.”

Subsec. (h). Pub. L. 105-277, § 1005(a), amended heading and text of subsec. (h) generally. Prior to amendment, text consisted of pars. (1) to (9) relating to special rule for income derived in active conduct of banking, financing, or similar businesses, principles for determining applicable income, meaning of “predominantly engaged” for purposes of the special rule, methods of determining unearned premiums and reserves, definitions of certain terms for purposes of subsec. (h), anti-abuse rules, coordination with section 953 of this title, and taxable year applicability of subsec. (h).

Subsec. (i). Pub. L. 105-277, § 1005(b)(2), added subsec. (i).

1997—Subsec. (c)(1)(B). Pub. L. 105-34, § 1051(a)(2), in concluding provisions, struck out “In the case of any regular dealer in property, gains and losses from the sale or exchange of any such property or arising out of bona fide hedging transactions reasonably necessary to the conduct of the business of being a dealer in such property shall not be taken into account under this subparagraph.” before “Gains and losses” and “also” after “section 1221(1)”.

Subsec. (c)(1)(F), (G). Pub. L. 105-34, § 1051(a)(1), added subpars. (F) and (G).

Subsec. (c)(2)(C). Pub. L. 105-34, § 1051(b), added subpar. (C).

Subsec. (e)(2)(C). Pub. L. 105-34, § 1175(b), added subpar. (C).

Subsec. (h). Pub. L. 105-34, § 1175(a), added subsec. (h).

1996—Subsec. (c)(3)(A)(i). Pub. L. 104-188 amended directory language of Pub. L. 101-239, § 7811(i)(3)(A). See 1989 Amendment note below.

1993—Subsec. (b)(8). Pub. L. 103-66, § 13235(a)(3)(B), struck out “(1),” after “such corporation under paragraph”.

Subsec. (c)(3)(C). Pub. L. 103-66, § 13233(a)(1), added subpar. (C).

Subsec. (d)(4). Pub. L. 103-66, § 13239(d), added par. (4).

Subsec. (f). Pub. L. 103-66, § 13235(b), inserted at end of concluding provisions “Except as provided in paragraph (1), such term shall not include any dividend or interest income which is foreign personal holding company income (as defined in subsection (c)).”

Subsec. (g)(1). Pub. L. 103-66, § 13235(a)(3)(A), inserted at end “Such term shall not include any foreign personal holding company income (as defined in subsection (c)).”

1989—Subsec. (c)(3)(A). Pub. L. 101-239, § 7811(i)(3)(C), inserted at end “To the extent provided in regulations, payments made by a partnership with 1 or more corporate partners shall be treated as made by such corporate partners in proportion to their respective interests in the partnership.”

Subsec. (c)(3)(A)(i). Pub. L. 101-239, § 7811(i)(3)(A), as amended by Pub. L. 104-188, substituted “is a corporation created” for “is created” after “person which (I)”.

Subsec. (c)(3)(A)(ii). Pub. L. 101-239, § 7811(i)(3)(B), substituted “from a corporation which is a related person” for “from a related person”.

1988—Subsec. (b)(6), (7). Pub. L. 100-647, § 1012(i)(12), struck out “(determined without regard to the exclusion under paragraph (2) of this subsection)” after “paragraph (4) of subsection (a)”.

Subsec. (c)(1)(B). Pub. L. 100-647, § 1012(i)(18), (20), added cl. (ii), redesignated former cl. (ii) as (iii), added closing provisions, and struck out former closing provisions which read as follows: “This subparagraph shall not apply to gain from the sale or exchange of any property which, in the hands of the taxpayer, is property described in section 1221(1) or to gain from the sale or exchange of any property by a regular dealer in such property.”

Subsec. (c)(3)(B). Pub. L. 100-647, § 1012(i)(25)(B), inserted before period at end “or creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation”.

Subsec. (d)(3). Pub. L. 100-647, § 1012(i)(14)(A), substituted “more than 50 percent” for “50 percent or more” in last two sentences.

Subsec. (e)(3). Pub. L. 100-647, § 1018(u)(38), related to execution of amendment by Pub. L. 99-514, § 1221(b)(3)(B), see 1986 Amendment note below.

1986—Subsec. (a)(5). Pub. L. 99-514, § 1221(c)(3)(A)(ii), substituted “determined under subsection (g)” for “determined under subsection (h)”.

Subsec. (b)(2). Pub. L. 99-514, § 1221(c)(1), struck out par. (2), exclusion for reinvested shipping income, which read as follows: “For purposes of subsection (a), foreign base company income does not include foreign base company shipping income to the extent that the amount of such income does not exceed the increase for the taxable year in qualified investments in foreign base company shipping operations of the controlled foreign corporation (as determined under subsection (g)).”

Subsec. (b)(3). Pub. L. 99-514, § 1223(a), amended par. (3) generally. Prior to amendment, par. (3), special rule where foreign base company income is less than 10 percent or more than 70 percent of gross income, read as follows: “For purposes of subsection (a)—

“(A) If the foreign base company income (determined without regard to paragraphs (2) and (5)) is less than 10 percent of gross income, no part of the gross income of the taxable year shall be treated as foreign base company income.

“(B) If the foreign base company income (determined without regard to paragraphs (2) and (5)) exceeds 70 percent of gross income, the entire gross income of the taxable year shall, subject to the provisions of paragraphs (2), (4), and (5), be treated as foreign base company income.”

Subsec. (b)(4). Pub. L. 99-514, § 1221(d), amended par. (4) generally. Prior to amendment, par. (4), exception for foreign corporations not availed of to reduce taxes, read as follows: “For purposes of subsection (a), foreign base company income does not include any item of income received by a controlled foreign corporation if it is established to the satisfaction of the Secretary that neither—

“(A) the creation or organization of such controlled foreign corporation under the laws of the foreign country in which it is incorporated (or, in the case of a controlled foreign corporation which is an acquired corporation, the acquisition of such corporation created or organized under the laws of the foreign country in which it is incorporated), nor

“(B) the effecting of the transaction giving rise to such income through the controlled foreign corporation,

has as one of its significant purposes a substantial reduction of income, war profits, or excess profits or similar taxes. The preceding sentence shall not apply to foreign base company oil related income described in subsection (a)(5).”

Subsec. (b)(5). Pub. L. 99-514, § 1201(c), inserted at end “Except to the extent provided in regulations prescribed by the Secretary, any interest which is paid or accrued by the controlled foreign corporation to any United States shareholder in such corporation (or any controlled foreign corporation related to such a shareholder) shall be allocated first to foreign personal holding company income which is passive income (within the meaning of section 904(d)(2)) of such corporation to the extent thereof. The Secretary may, by regulations, provide that the preceding sentence shall apply also to interest paid or accrued to other persons.”

Subsec. (c). Pub. L. 99-514, § 1221(a)(1), amended subsec. (c) generally, substituting pars. (1) to (3) for former provisions which had provided: in par. (1), a reference to definition of “foreign personal holding company income” contained in section 553; in par. (2), that all rents would be included in “foreign personal holding company income” without regard to whether or not such rents constituted 50 percent or more of gross income; in par. (3), for exclusion of certain income derived in active conduct of a trade or business; and in par. (4), exclusion of certain income received from related persons from being included in “foreign personal holding company income”. See subsec. (c)(3).

Subsec. (d)(3). Pub. L. 99-514, § 1221(e), added subpars. (A) and (B) and concluding provisions and struck out

former subpars. (A) to (C) and concluding provisions which read as follows:

“(A) such person is an individual, partnership, trust, or estate which controls the controlled foreign corporation;

“(B) such person is a corporation which controls, or is controlled by, the controlled foreign corporation; or

“(C) such person is a corporation which is controlled by the same person or persons which control the controlled foreign corporation.

For purposes of the preceding sentence, control means the ownership, directly or indirectly, of stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote. For purposes of this paragraph, the rules for determining ownership of stock prescribed by section 958 shall apply.”

Subsec. (e). Pub. L. 99-514, §1810(k), in amending subsec. (e) generally, designated existing provisions as par. (1), added par. heading, and substituted subpar. (A) and (B) designations for prior par. (1) and (2) designations, struck out provisions relating to nonapplicability of preceding sentence to services performed in connection with manufactured or grown or extracted property, and provisions determining the place of performance of services for purposes of paragraph (2) with respect to any policy of insurance and reinsurance, and added pars. (2) and (3).

Subsec. (e)(3). Pub. L. 99-514, §1221(b)(3)(B), and Pub. L. 100-647, §1018(u)(38), struck out par. (3) as enacted by section 1810(k) of Pub. L. 99-514, which read as follows: “For purposes of paragraph (1), in the case of any services performed with respect to any policy of insurance or reinsurance with respect to which the primary insured is a related person (within the meaning of section 864(d)(4))—

“(A) such primary insured shall be treated as a related person for purposes of paragraph (1)(A) (whether or not the requirements of subsection (d)(3) are met),

“(B) such services shall be treated as performed in the country within which the insured hazards, risks, losses, or liabilities occur, and

“(C) except as otherwise provided in regulations by the Secretary, rules similar to the rules of section 953(b) shall be applied in determining the income from such services.”

Subsec. (f). Pub. L. 99-514, §1221(c)(2), inserted last sentence.

Subsecs. (g), (h). Pub. L. 99-514, §1221(c)(3)(A)(i), redesignated subsec. (h) as (g) and struck out former subsec. (g), increase in qualified investments in foreign base company shipping operations, which read as follows: “For purposes of subsection (b)(2), the increase for any taxable year in qualified investments in foreign base company shipping operations of any controlled foreign corporation is the amount by which—

“(1) the qualified investments in foreign base company shipping operations (as defined in section 955(b)) of the controlled foreign corporation at the close of the taxable year, exceed

“(2) the qualified investments in foreign base company shipping operations (as so defined) of the controlled foreign corporation at the close of the preceding taxable year.”

1984—Subsec. (e). Pub. L. 98-369, §137(a), inserted provision that for purposes of par. (2) services performed with respect to any insurance or reinsurance policy be treated as performed in the country of risk.

Subsec. (h)(1). Pub. L. 98-369, §712(f), substituted “paragraphs (2) and (3) of section 907(c)” for “section 907(c)(2)”.

1982—Subsec. (a)(5). Pub. L. 97-248, §212(a), (e), added par. (5).

Subsec. (b)(4). Pub. L. 97-248, §212(d), inserted at end “The preceding sentence shall not apply to foreign base company oil related income described in subsection (a)(5).”

Subsec. (b)(5). Pub. L. 97-248, §212(b)(1), substituted “, the foreign base company shipping income, and the foreign base company oil related income” for “and the foreign base company shipping income”.

Subsec. (b)(8). Pub. L. 97-248, §212(b)(2), added par. (8).
Subsec. (h). Pub. L. 97-248, §212(c), added subsec. (h).
1976—Subsecs. (b)(4), (5). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (b)(7). Pub. L. 94-455, §1024(a), added par. (7).
Subsec. (c)(3)(C). Pub. L. 94-455, §1023(a), added subpar. (C).

1975—Subsec. (a)(4). Pub. L. 94-12, §602(d)(1)(A), added par. (4).

Subsec. (b)(1). Pub. L. 94-12, §602(c)(1), struck out subsec. (b)(1) which related to the exclusion of certain dividends, interest, and gains from qualified investments in less developed countries.

Subsec. (b)(2). Pub. L. 94-12, §602(d)(1)(B), substituted “foreign base company shipping income to the extent that the amount of such income does not exceed the increase for the taxable year in qualified investments in foreign base company shipping operations of the controlled foreign corporation (as determined under subsection (g))” for “income derived from, or in connection with, the use (or hiring or leasing for use) of any aircraft or vessel in foreign commerce, or the performance of services directly related to the use of any such aircraft or vessel” in text and “Exclusion for reinvested shipping income” for “Exclusion of certain shipping income” in heading.

Subsec. (b)(3). Pub. L. 94-12, §602(d)(1)(C), (D), (e), substituted “10 percent” for “30 percent” in heading, substituted “paragraphs (2) and (5)” for “paragraphs (1) and (5)” and “10 percent” for “30 percent” in subpar. (A), and substituted “paragraphs (2) and (5)” for “paragraphs (1) and (5)” and “paragraphs (2), (4), and (5)” for “paragraphs (1), (2), (4), and (5)” in subpar. (B).

Subsec. (b)(5). Pub. L. 94-12, §602(d)(1)(E), substituted “the foreign base company services income, and the foreign base company shipping income” for “and the foreign base company services income”.

Subsec. (b)(6). Pub. L. 94-12, §602(d)(1)(F), added par. (6).

Subsec. (d)(1). Pub. L. 94-12, §602(b), provided that for purposes of subsec. (d) personal property does not include agricultural commodities which are not grown in the United States in commercially marketable quantities.

Subsecs. (f), (g). Pub. L. 94-12, §602(c)(2), (d)(1)(G), added subsecs. (f) and (g).

1969—Subsec. (b)(4). Pub. L. 91-172 inserted reference to a foreign corporation which is an acquired corporation, and made the effecting of a transaction giving rise to foreign base income through the controlled foreign corporation subject to the Secretary’s power to disallow inclusion of any item of such income where such inclusion will have one of the effects prescribed by this section.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13517(b)(5) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, with transition rule and transition relief, see section 13517(c) of Pub. L. 115-97, set out as a note under section 807 of this title.

Amendment by section 14211(a), (b)(2), (3) of Pub. L. 115-97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 14211(c) of Pub. L. 115-97, set out as a note under section 952 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by section 128(b) of Pub. L. 114-113 applicable to taxable years of foreign corporations beginning after Dec. 31, 2014, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends, see section 128(c) of Pub. L. 114-113, set out as a note under section 953 of this title.

Pub. L. 114-113, div. Q, title I, §144(b), Dec. 18, 2015, 129 Stat. 3065, provided that: “The amendment made by

this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2014, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section 134(b) of Pub. L. 113-295 applicable to taxable years of foreign corporations beginning after Dec. 31, 2013, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends, see section 134(c) of Pub. L. 113-295, set out as a note under section 953 of this title.

Pub. L. 113-295, div. A, title I, §135(b), Dec. 19, 2014, 128 Stat. 4019, provided that: “The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2013, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by section 322(b) of Pub. L. 112-240 applicable to taxable years of foreign corporations beginning after Dec. 31, 2011, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends, see section 322(c) of Pub. L. 112-240, set out as a note under section 953 of this title.

Pub. L. 112-240, title III, §323(b), Jan. 2, 2013, 126 Stat. 2333, provided that: “The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2011, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 750(a) of Pub. L. 111-312 applicable to taxable years of foreign corporations beginning after Dec. 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends, see section 750(c) of Pub. L. 111-312, set out as a note under section 953 of this title.

Pub. L. 111-312, title VII, §751(b), Dec. 17, 2010, 124 Stat. 3321, provided that: “The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. C, title III, §304(b), Oct. 3, 2008, 122 Stat. 3867, provided that: “The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2007, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 4(a) of Pub. L. 110-172 effective as if included in the provisions of the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. 109-222, to which such amendment relates, with certain exceptions, see section 4(d) of Pub. L. 110-172, set out as a note under section 355 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title IV, §426(a)(2), Dec. 20, 2006, 120 Stat. 2974, provided that: “The amendments made by this subsection [amending this section] shall take effect as if included in section 103(b) of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109-222].”

Pub. L. 109-222, title I, §103(b)(2), May 17, 2006, 120 Stat. 347, provided that: “The amendment made by this subsection [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2005, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 403(m) of Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title IV, §412(b), Oct. 22, 2004, 118 Stat. 1506, provided that: “The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

Amendment by section 413(b)(2) of Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108-357, title IV, §414(d), Oct. 22, 2004, 118 Stat. 1511, provided that: “The amendments made by this section [amending this section] shall apply to transactions entered into after December 31, 2004.”

Amendment by section 415(a), (b), (c)(2) of Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 415(d) of Pub. L. 108-357, set out as a note under section 952 of this title.

Pub. L. 108-357, title IV, §416(b), Oct. 22, 2004, 118 Stat. 1512, provided that: “The amendment made by this section [amending this section] shall apply to taxable years of such foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of such foreign corporations end.”

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 614(a)(2), (b)(1) of Pub. L. 107-147 applicable to taxable years beginning after Dec. 31, 2001, see section 614(c) of Pub. L. 107-147, set out as a note under section 953 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 503(a) of Pub. L. 106-170 applicable to taxable years beginning after Dec. 31, 1999, see section 503(c) of Pub. L. 106-170, set out as a note under section 953 of this title.

Amendment by section 532(c)(2)(Q) of Pub. L. 106-170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106-170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 4003(j) of Pub. L. 105-277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 4003(l) of Pub. L. 105-277, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title X, §1051(c), Aug. 5, 1997, 111 Stat. 940, provided that: “The amendments made by this sec-

tion [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].”

Pub. L. 105-34, title XI, §1175(c), Aug. 5, 1997, 111 Stat. 993, provided that: “The amendments made by this section [amending this section] shall apply to the first full taxable year of a foreign corporation beginning after December 31, 1997, and before January 1, 1999, and to taxable years of United States shareholders with or within which such taxable year of such foreign corporation ends.”

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-66, title XIII, §13233(a)(2), Aug. 10, 1993, 107 Stat. 502, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to taxable years of controlled foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end.”

Amendment by section 13235(a)(3) and (b) of Pub. L. 103-66 applicable to taxable years beginning after Dec. 31, 1992, see section 13235(c) of Pub. L. 103-66, set out as a note under section 904 of this title.

Amendment by section 13239(d) of Pub. L. 103-66 applicable to sales, exchanges, or other dispositions after Aug. 10, 1993, see section 13239(e) of Pub. L. 103-66, set out as a note under section 865 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

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

Pub. L. 99-514, title XII, §1221(g), Oct. 22, 1986, 100 Stat. 2555, as amended by Pub. L. 100-647, title I, §1012(i)(13), Nov. 10, 1988, 102 Stat. 3509, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 864, 952, 953, 955, and 957 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1986.

“(2) SPECIAL RULE FOR REPEAL OF EXCLUSION FOR REINVESTMENT SHIPPING INCOME.—

“(A) IN GENERAL.—In the case of any qualified controlled foreign corporation—

“(i) the amendments made by subsection (c) [amending this section and section 955 of this title] shall apply to taxable years ending on or after January 1, 1992, and

“(ii) [former] sections 955(a)(1)(A) and 955(a)(2)(A) of the Internal Revenue Code of 1986 (as amended by subsection (c)(3)) shall be applied by substituting ‘ending before 1992’ for ‘beginning before 1987’.

“(B) QUALIFIED CONTROLLED FOREIGN CORPORATION.—For purposes of subparagraph (A), the term ‘qualified controlled foreign corporation’ means any controlled foreign corporation (as defined in section 957 of such Code)—

“(i) if the United States agent of such corporation is a domestic corporation incorporated on March 13, 1951, and

“(ii) if—

“(I) the certificate of incorporation of such corporation is dated November 23, 1963, and

“(II) such corporation has a wholly owned subsidiary and its certificate of incorporation is dated November 2, 1965.

“(3) EXCEPTION FOR CERTAIN REINSURANCE CONTRACTS.—

“(A) IN GENERAL.—In the case of the 1st 3 taxable years of a qualified controlled foreign insurer beginning after December 31, 1986, the amendments made by this section shall not apply to the phase-in percentage of any qualified reinsurance income.

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

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

“(C) QUALIFIED CONTROLLED FOREIGN INSURER.—For purposes of this paragraph, the term ‘qualified controlled foreign insurer’ means—

“(i) any controlled foreign corporation which on August 16, 1986, was a member of an affiliated group (as defined in section 1504(a) of the Internal Revenue Code of 1986 without regard to subsection (b)(3) thereof) which had as its common parent a corporation incorporated in Delaware on June 9, 1967, with executive offices in New York, New York, or

“(ii) any controlled foreign corporation which on August 16, 1986, was a member of an affiliated group (as so defined) which had as its common parent a corporation incorporated in Delaware on November 3, 1981, with executive offices in Philadelphia, Pennsylvania.

“(D) QUALIFIED REINSURANCE INCOME.—For purposes of this paragraph, the term ‘qualified reinsurance income’ means any insurance income attributable to risks (other than risks described in section 953(a) or 954(e) of such Code as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) assumed under a reinsurance contract. For purposes of this subparagraph, insurance income shall mean the underwriting income (as defined in section 832(b)(3) of such Code) and investment income derived from an amount of assets (to be segregated and separately identified) equivalent to the ordinary and necessary insurance reserves and necessary surplus equal to 1/3 of earned premium attributable to such contracts. For purposes of this paragraph, the amount of qualified reinsurance income shall not exceed the amount of insurance income from reinsurance contracts for calendar year 1985. In the case of controlled foreign corporations described in subparagraph (C)(ii), the preceding sentence shall not apply and the qualified reinsurance income of any such corporation shall not exceed such corporation’s proportionate share of \$27,000,000 (determined on the basis of respective amounts of qualified reinsurance income determined without regard to this subparagraph).”

Amendment by section 1223(a) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1223(c) of Pub. L. 99-514, set out as a note under section 864 of this title.

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

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, §137(b), July 18, 1984, 98 Stat. 672, provided that: “The amendments made by subsection (a) [amending this section] shall apply to taxable years of controlled foreign corporations beginning after the date of the enactment of this Act [July 18, 1984].”

Amendment by section 712(f) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title II, §212(f), Sept. 3, 1982, 96 Stat. 452, provided that: "The amendments made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1982, and to taxable years of United States shareholders in which, or with which, such taxable years of foreign corporations end."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title X, §1023(b), Oct. 4, 1976, 90 Stat. 1620, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end."

Pub. L. 94-455, title X, §1024(b), Oct. 4, 1976, 90 Stat. 1620, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end."

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94-12, title VI, §602(f), Mar. 29, 1975, 89 Stat. 64, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [enacting section 955 of this title, amending this section and sections 851, 902, and 951 of this title, and repealing section 963 and former section 955 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end."

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-172, title IX, §909(b), Dec. 30, 1969, 83 Stat. 718, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after October 9, 1969."

LINE ITEM VETO

Pub. L. 105-34, title XI, §1175, Aug. 5, 1997, 111 Stat. 990, amending this section and enacting provisions set out as a note above, was subject to line item veto by the President, Cancellation No. 97-1, signed Aug. 11, 1997, 62 F.R. 43266, Aug. 12, 1997. For decision holding line item veto unconstitutional, see *Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998).

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

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

SPECIAL RULE FOR APPLICATION OF SECTION 954 TO CERTAIN DIVIDENDS

Pub. L. 99-514, title XII, §1227, Oct. 22, 1986, 100 Stat. 2560, provided that:

"(a) IN GENERAL.—For purposes of section 954(c)(3)(A) of the Internal Revenue Code of 1986, any dividends received by a qualified controlled foreign corporation (within the meaning of section 951 of such Code) during any of its 1st 5 taxable years beginning after December 31, 1986, with respect to its 32.7 percent interest in a Brazilian corporation shall be treated as if such Brazilian corporation were a related person to the qualified controlled foreign corporation to the extent the Brazilian corporation's income is attributable to its interest in the trade or business of mining in Brazil.

"(b) QUALIFIED CONTROLLED FOREIGN CORPORATION.—For purposes of this section, a qualified controlled foreign corporation is a corporation the greater than 99 percent shareholder of which is a company originally incorporated in Montana on July 9, 1951 (the name of which was changed on August 10, 1966).

"(c) EFFECTIVE DATE.—The amendment made by this section shall apply to dividends received after December 31, 1986."

[§ 955. Repealed. Pub. L. 115-97, title I, § 14212(a), Dec. 22, 2017, 131 Stat. 2217]

Section, added Pub. L. 94-12, title VI, §602(d)(3)(A), Mar. 29, 1975, 89 Stat. 62; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99-514, title XII, §1221(c)(3)(B), (C), Oct. 22, 1986, 100 Stat. 2553; Pub. L. 100-647, title I, §1012(i)(11), Nov. 10, 1988, 102 Stat. 3509, related to withdrawal of previously excluded subpart F income from qualified investment.

A prior section 955, added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1013, related to investments in less developed countries and dealing with less developed country corporations, prior to repeal by Pub. L. 94-12, title VI, §602(c)(5), Mar. 29, 1975, 89 Stat. 59.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14212(c) of Pub. L. 115-97, set out as an Effective Date of 2017 Amendment note under section 851 of this title.

§ 956. Investment of earnings in United States property

(a) General rule

In the case of any controlled foreign corporation, the amount determined under this section with respect to any United States shareholder for any taxable year is the lesser of—

(1) the excess (if any) of—

(A) such shareholder's pro rata share of the average of the amounts of United States property held (directly or indirectly) by the controlled foreign corporation as of the close of each quarter of such taxable year, over

(B) the amount of earnings and profits described in section 959(c)(1)(A) with respect to such shareholder, or

(2) such shareholder's pro rata share of the applicable earnings of such controlled foreign corporation.

The amount taken into account under paragraph (1) with respect to any property shall be its adjusted basis as determined for purposes of computing earnings and profits, reduced by any liability to which the property is subject.

(b) Special rules

(1) Applicable earnings

For purposes of this section, the term "applicable earnings" means, with respect to any controlled foreign corporation, the sum of—

(A) the amount (not including a deficit) referred to in section 316(a)(1) to the extent such amount was accumulated in prior taxable years, and

(B) the amount referred to in section 316(a)(2),

but reduced by distributions made during the taxable year and by earnings and profits described in section 959(c)(1).

(2) Special rule for U.S. property acquired before corporation is a controlled foreign corporation

In applying subsection (a) to any taxable year, there shall be disregarded any item of United States property which was acquired by the controlled foreign corporation before the first day on which such corporation was treated as a controlled foreign corporation. The aggregate amount of property disregarded under the preceding sentence shall not exceed the portion of the applicable earnings of such controlled foreign corporation which were accumulated during periods before such first day.

(3) Special rule where corporation ceases to be controlled foreign corporation

If any foreign corporation ceases to be a controlled foreign corporation during any taxable year—

(A) the determination of any United States shareholder's pro rata share shall be made on the basis of stock owned (within the meaning of section 958(a)) by such shareholder on the last day during the taxable year on which the foreign corporation is a controlled foreign corporation,

(B) the average referred to in subsection (a)(1)(A) for such taxable year shall be determined by only taking into account quarters ending on or before such last day, and

(C) in determining applicable earnings, the amount taken into account by reason of being described in paragraph (2) of section 316(a) shall be the portion of the amount so described which is allocable (on a pro rata basis) to the part of such year during which the corporation is a controlled foreign corporation.

(c) United States property defined

(1) In general

For purposes of subsection (a), the term "United States property" means any property acquired after December 31, 1962, which is—

(A) tangible property located in the United States;

(B) stock of a domestic corporation;

(C) an obligation of a United States person; or

(D) any right to the use in the United States of—

(i) a patent or copyright,

(ii) an invention, model, or design (whether or not patented),

(iii) a secret formula or process, or

(iv) any other similar right,

which is acquired or developed by the controlled foreign corporation for use in the United States.

(2) Exceptions

For purposes of subsection (a), the term "United States property" does not include—

(A) obligations of the United States, money, or deposits with—

(i) any bank (as defined by section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)), without regard to subparagraphs (C) and (G) of paragraph (2) of such section), or

(ii) any corporation not described in clause (i) with respect to which a bank holding company (as defined by section 2(a) of such Act) or financial holding company (as defined by section 2(p) of such Act) owns directly or indirectly more than 80 percent by vote or value of the stock of such corporation;

(B) property located in the United States which is purchased in the United States for export to, or use in, foreign countries;

(C) any obligation of a United States person arising in connection with the sale or processing of property if the amount of such obligation outstanding at no time during the taxable year exceeds the amount which would be ordinary and necessary to carry on the trade or business of both the other party to the sale or processing transaction and the United States person had the sale or processing transaction been made between unrelated persons;

(D) any aircraft, railroad rolling stock, vessel, motor vehicle, or container used in the transportation of persons or property in foreign commerce and used predominantly outside the United States;

(E) an amount of assets of an insurance company equivalent to the unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business attributable to contracts which are contracts described in section 953(e)(2);

(F) the stock or obligations of a domestic corporation which is neither a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, nor a domestic corporation, 25 percent or more of the total combined voting power of which, immediately after the acquisition of any stock in such domestic corporation by the controlled foreign corporation, is owned, or is considered as being owned, by such United States shareholders in the aggregate;

(G) any movable property (other than a vessel or aircraft) which is used for the pur-

pose of exploring for, developing, removing, or transporting resources from ocean waters or under such waters when used on the Continental Shelf of the United States;

(H) an amount of assets of the controlled foreign corporation equal to the earnings and profits accumulated after December 31, 1962, and excluded from subpart F income under section 952(b);

(I) deposits of cash or securities made or received on commercial terms in the ordinary course of a United States or foreign person's business as a dealer in securities or in commodities, but only to the extent such deposits are made or received as collateral or margin for (i) a securities loan, notional principal contract, options contract, forward contract, or futures contract, or (ii) any other financial transaction in which the Secretary determines that it is customary to post collateral or margin;

(J) an obligation of a United States person to the extent the principal amount of the obligation does not exceed the fair market value of readily marketable securities sold or purchased pursuant to a sale and repurchase agreement or otherwise posted or received as collateral for the obligation in the ordinary course of its business by a United States or foreign person which is a dealer in securities or commodities;

(K) securities acquired and held by a controlled foreign corporation in the ordinary course of its business as a dealer in securities if—

(i) the dealer accounts for the securities as securities held primarily for sale to customers in the ordinary course of business, and

(ii) the dealer disposes of the securities (or such securities mature while held by the dealer) within a period consistent with the holding of securities for sale to customers in the ordinary course of business; and

(L) an obligation of a United States person which—

(i) is not a domestic corporation, and

(ii) is not—

(I) a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, or

(II) a partnership, estate, or trust in which the controlled foreign corporation, or any related person (as defined in section 954(d)(3)), is a partner, beneficiary, or trustee immediately after the acquisition of any obligation of such partnership, estate, or trust by the controlled foreign corporation.

For purposes of subparagraphs (I), (J), and (K), the term “dealer in securities” has the meaning given such term by section 475(c)(1), and the term “dealer in commodities” has the meaning given such term by section 475(e), except that such term shall include a futures commission merchant.

(3) Certain trade or service receivables acquired from related United States persons

(A) In general

Notwithstanding paragraph (2) (other than subparagraph (H) thereof), the term “United States property” includes any trade or service receivable if—

(i) such trade or service receivable is acquired (directly or indirectly) from a related person who is a United States person, and

(ii) the obligor under such receivable is a United States person.

(B) Definitions

For purposes of this paragraph, the term “trade or service receivable” and “related person” have the respective meanings given to such terms by section 864(d).

(d) Pledges and guarantees

For purposes of subsection (a), a controlled foreign corporation shall, under regulations prescribed by the Secretary, be considered as holding an obligation of a United States person if such controlled foreign corporation is a pledgor or guarantor of such obligations.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to prevent the avoidance of the provisions of this section through reorganizations or otherwise.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1015; amended Pub. L. 94-455, title X, §1021(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1618, 1834; Pub. L. 98-369, div. A, title I, §123(b), title VIII, §801(d)(8), July 18, 1984, 98 Stat. 646, 996; Pub. L. 99-514, title XVIII, §1810(c)(1), Oct. 22, 1986, 100 Stat. 2824; Pub. L. 103-66, title XIII, §13232(a), (b), Aug. 10, 1993, 107 Stat. 501; Pub. L. 104-188, title I, §1501(b)(2), (3), Aug. 20, 1996, 110 Stat. 1825; Pub. L. 105-34, title XI, §1173(a), title XVI, §1601(e), Aug. 5, 1997, 111 Stat. 988, 1090; Pub. L. 108-357, title IV, §407(a), (b), title VIII, §837(a), Oct. 22, 2004, 118 Stat. 1498, 1499, 1596; Pub. L. 110-172, §11(g)(15)(A), Dec. 29, 2007, 121 Stat. 2490; Pub. L. 115-141, div. U, title IV, §401(a)(162), (163), Mar. 23, 2018, 132 Stat. 1192.)

AMENDMENTS

2018—Subsec. (c)(2)(E). Pub. L. 115-141, §401(a)(162), substituted “which are contracts described in section 953(e)(2)” for “which are not contracts described in section 953(a)(1)”.

Subsec. (e). Pub. L. 115-141, §401(a)(163), substituted “provisions” for “provisons”.

2007—Subsec. (c)(2). Pub. L. 110-172, §11(g)(15)(A)(ii), substituted “subparagraphs (I), (J), and (K)” for “subparagraphs (J), (K), and (L)” in concluding provisions.

Subsec. (c)(2)(I) to (M). Pub. L. 110-172, §11(g)(15)(A)(i), redesignated subpars. (J) to (M) as (I) to (L), respectively, and struck out former subpar. (I) which read as follows: “to the extent provided in regulations prescribed by the Secretary, property which is otherwise United States property which is held by a FSC and which is related to the export activities of such FSC;”.

2004—Subsec. (c)(2). Pub. L. 108-357, §407(b), substituted “, (K), and (L)” for “and (K)” in concluding provisions.

Subsec. (c)(2)(A). Pub. L. 108-357, § 837(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “obligations of the United States, money, or deposits with persons carrying on the banking business:”.

Subsec. (c)(2)(L), (M). Pub. L. 108-357, § 407(a), added subpars. (L) and (M).

1997—Subsec. (b)(1)(A). Pub. L. 105-34, § 1601(e), inserted “to the extent such amount was accumulated in prior taxable years” after “section 316(a)(1)”.

Subsec. (c)(2). Pub. L. 105-34, § 1173(a), added subpars. (J) and (K) and concluding provisions.

1996—Subsec. (b)(1). Pub. L. 104-188, § 1501(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “For purposes of this section, the term ‘applicable earnings’ has the meaning given to such term by section 956A(b), except that the provisions of such section excluding earnings and profits accumulated in taxable years beginning before October 1, 1993, shall be disregarded.”

Subsec. (b)(3). Pub. L. 104-188, § 1501(b)(3), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Rules similar to the rules of section 956A(e) shall apply for purposes of this section.”

1993—Subsec. (a). Pub. L. 103-66, § 13232(a)(2), added subsec. (a) and struck out former subsec. (a) which consisted of introductory provisions and pars. (1) to (3) setting out general rules for calculating amount of earnings of a controlled foreign corporation invested in United States and pro rata share of the increase for any taxable year in earnings of such a corporation invested in United States property.

Subsecs. (b) to (d). Pub. L. 103-66, § 13232(a), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

Subsec. (e). Pub. L. 103-66, § 13232(b), added subsec. (e). 1986—Subsec. (b)(3)(A). Pub. L. 99-514 inserted “(other than subparagraph (H) thereof)”.

1984—Subsec. (b)(2)(I). Pub. L. 98-369, § 801(d)(8), added subpar. (I).

Subsec. (b)(3). Pub. L. 98-369, § 123(b), added par. (3). 1976—Subsec. (b)(2)(F) to (H). Pub. L. 94-455, § 1021(a), added subpars. (F) and (G) and redesignated former subpar. (F) as (H).

Subsec. (c). Pub. L. 94-455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title IV, § 407(c), Oct. 22, 2004, 118 Stat. 1499, provided that: “The amendments made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

Pub. L. 108-357, title VIII, § 837(b), Oct. 22, 2004, 118 Stat. 1596, provided that: “The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004].”

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XI, § 1173(b), Aug. 5, 1997, 111 Stat. 989, provided that: “The amendments made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1997, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

Amendment by section 1601(e) of Pub. L. 105-34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which it relates, see section 1601(j) of Pub. L. 105-34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders

within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104-188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to taxable years of controlled foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end, see section 13232(d) of Pub. L. 103-66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 123(b) of Pub. L. 98-369 applicable to accounts receivable and evidences of indebtedness transferred after Mar. 1, 1984, in taxable years ending after such date, with an exception, see section 123(c) of Pub. L. 98-369, set out as a note under section 864 of this title.

Amendment by section 801(d)(8) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title X, § 1021(c), Oct. 4, 1976, 90 Stat. 1619, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [amending this section and section 958 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end. In determining for purposes of any taxable year referred to in the preceding sentence the amount referred to in section 956(a)(2)(A) of the Internal Revenue Code of 1986 for the last taxable year of a corporation beginning before January 1, 1976, the amendments made by this section shall be deemed also to apply to such last taxable year.”

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

[§ 956A. Repealed. Pub. L. 104-188, title I, § 1501(a)(2), Aug. 20, 1996, 110 Stat. 1825]

Section, added Pub. L. 103-66, title XIII, § 13231(b), Aug. 10, 1993, 107 Stat. 496; amended Pub. L. 104-188, title I, § 1703(i)(2), (3), Aug. 20, 1996, 110 Stat. 1876, related to earnings invested in excess passive assets.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 104-188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104-188, set out as an Effective Date of 1996 Amendment note under section 904 of this title.

§ 957. Controlled foreign corporations; United States persons

(a) General rule

For purposes of this title, the term “controlled foreign corporation” means any foreign corporation if more than 50 percent of—

- (1) the total combined voting power of all classes of stock of such corporation entitled to vote, or
- (2) the total value of the stock of such corporation,

is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such foreign corporation.

(b) Special rule for insurance

For purposes only of taking into account income described in section 953(a) (relating to insurance income), the term “controlled foreign corporation” includes not only a foreign corporation as defined by subsection (a) but also one of which more than 25 percent of the total combined voting power of all classes of stock (or more than 25 percent of the total value of stock) is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such corporation, if the gross amount of premiums or other consideration in respect of the reinsurance or the issuing of insurance or annuity contracts not described in section 953(e)(2) exceeds 75 percent of the gross amount of all premiums or other consideration in respect of all risks.

(c) United States person

For purposes of this subpart, the term “United States person” has the meaning assigned to it by section 7701(a)(30) except that—

(1) with respect to a corporation organized under the laws of the Commonwealth of Puerto Rico, such term does not include an individual who is a bona fide resident of Puerto Rico, if a dividend received by such individual during the taxable year from such corporation would, for purposes of section 933(1), be treated as income derived from sources within Puerto Rico, and

(2) with respect to a corporation organized under the laws of Guam, American Samoa, or the Northern Mariana Islands—

(A) 80 percent or more of the gross income of which for the 3-year period ending at the close of the taxable year (or for such part of such period as such corporation or any predecessor has been in existence) was derived from sources within such a possession or was effectively connected with the conduct of a trade or business in such a possession, and

(B) 50 percent or more of the gross income of which for such period (or part) was derived from the active conduct of a trade or business within such a possession,

such term does not include an individual who is a bona fide resident of Guam, American Samoa, or the Northern Mariana Islands.

For purposes of subparagraphs (A) and (B) of paragraph (2), the determination as to whether

income was derived from the active conduct of a trade or business within a possession shall be made under regulations prescribed by the Secretary.

(Added Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1017; amended Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99-514, title XII, §§ 1221(b)(3)(C), 1222(a), 1224(a), 1273(a), Oct. 22, 1986, 100 Stat. 2553, 2556, 2558, 2595; Pub. L. 108-357, title VIII, § 908(c)(5), Oct. 22, 2004, 118 Stat. 1656; Pub. L. 115-97, title I, § 14101(e)(2), Dec. 22, 2017, 131 Stat. 2192; Pub. L. 115-141, div. U, title IV, § 401(a)(164), Mar. 23, 2018, 132 Stat. 1192.)

AMENDMENTS

2018—Subsec. (b). Pub. L. 115-141 substituted “contracts not described in section 953(e)(2)” for “contracts described in section 953(a)(1)”.

2017—Subsec. (a). Pub. L. 115-97 substituted “title” for “subpart” in introductory provisions.

2004—Subsec. (c). Pub. L. 108-357, § 908(c)(5)(B), struck out “derived from sources within a possession, was effectively connected with the conduct of a trade or business within a possession, or” after “whether income was” in concluding provisions.

Subsec. (c)(2)(B). Pub. L. 108-357, § 908(c)(5)(A), substituted “active conduct of a” for “conduct of an active”.

1986—Subsec. (a). Pub. L. 99-514, § 1222(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “For purposes of this subpart, the term ‘controlled foreign corporation’ means any foreign corporation of which more than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned (within the meaning of section 958(a)), or is considered as owned by applying the rules of ownership of section 958(b), by United States shareholders on any day during the taxable year of such foreign corporation.”

Subsec. (b). Pub. L. 99-514, § 1222(a)(2), inserted “(or more than 25 percent of the total value of stock)”.

Pub. L. 99-514, § 1221(b)(3)(C), substituted “insurance income” for “income derived from insurance of United States risks”.

Subsec. (c). Pub. L. 99-514, § 1273(a), added par. (2) and concluding provisions and struck out former pars. (2) and (3) which read as follows:

“(2) with respect to a corporation organized under the laws of the Virgin Islands, such term does not include an individual who is a bona fide resident of the Virgin Islands and whose income tax obligation under this subtitle for the taxable year is satisfied pursuant to section 28(a) of the Revised Organic Act of the Virgin Islands, approved July 22, 1954 (48 U.S.C. 1642), by paying tax on income derived from all sources both within and outside the Virgin Islands into the treasury of the Virgin Islands, and

“(3) with respect to a corporation organized under the laws of any other possession of the United States, such term does not include an individual who is a bona fide resident of any such other possession and whose income derived from sources within possessions of the United States is not, by reason of section 931(a), includible in gross income under this subtitle for the taxable year.”

Pub. L. 99-514, § 1224(a), redesignated subsec. (d) as (c) and struck out former subsec. (c) which provided circumstances under which for purposes of this subpart, the term “controlled foreign corporation” would not include certain corporations created or organized in Puerto Rico or a possession of the United States or under the laws of Puerto Rico or a possession of the United States.

Subsec. (d). Pub. L. 99-514, § 1224(a), redesignated subsec. (d) as (c).

1976—Subsec. (c) Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to distributions made after Dec. 31, 2017, see section 14101(f) of Pub. L. 115-97, set out as an Effective Date note under section 245A of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years ending after Oct. 22, 2004, see section 908(d)(1) of Pub. L. 108-357, set out as an Effective Date note under section 937 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1221(b)(3)(C) of Pub. L. 99-514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99-514, set out as a note under section 954 of this title.

Pub. L. 99-514, title XII, §1222(c), Oct. 22, 1986, 100 Stat. 2557, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 552 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1986; except that for purposes of applying sections 951(a)(1)(B) and 956 of the Internal Revenue Code of 1986, such amendments shall take effect on August 16, 1986.

“(2) TRANSITIONAL RULE.—In the case of any corporation treated as a controlled foreign corporation by reason of the amendments made by this section, property acquired before August 16, 1986, shall not be taken into account under section 956(b) of the Internal Revenue Code of 1986.

“(3) SPECIAL RULE FOR BENEFICIARY OF TRUST.—In the case of an individual—

“(A) who is a beneficiary of a trust which was established on December 7, 1979, under the laws of a foreign jurisdiction, and

“(B) who was not a citizen or resident of the United States on the date the trust was established,

amounts which are included in the gross income of such beneficiary under section 951(a) of the Internal Revenue Code of 1986 with respect to stock held by the trust (and treated as distributed to the trust) shall be treated as the first amounts which are distributed by the trust to such beneficiary and as amounts to which section 959(a) of such Code applies.”

Pub. L. 99-514, title XII, §1224(b), Oct. 22, 1986, 100 Stat. 2558, provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1986; except that for purposes of applying sections 951(a)(1)(B) and 956 of the Internal Revenue Code of 1986, such amendments shall take effect on August 16, 1986.

“(2) TRANSITIONAL RULE.—In the case of any corporation treated as a controlled foreign corporation by reason of the amendment made by subsection (a), property acquired before August 16, 1986, shall not be taken into account under section 956(b) of the Internal Revenue Code of 1986.”

Amendment by section 1273(a) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99-514, set out as a note under section 931 of this title.

§ 958. Rules for determining stock ownership

(a) Direct and indirect ownership

(1) General rule

For purposes of this subpart (other than section 960), stock owned means—

(A) stock owned directly, and

(B) stock owned with the application of paragraph (2).

(2) Stock ownership through foreign entities

For purposes of subparagraph (B) of paragraph (1), stock owned, directly or indirectly,

by or for a foreign corporation, foreign partnership, or foreign trust or foreign estate (within the meaning of section 7701(a)(31)) shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(3) Special rule for mutual insurance companies

For purposes of applying paragraph (1) in the case of a foreign mutual insurance company, the term “stock” shall include any certificate entitling the holder to voting power in the corporation.

(b) Constructive ownership

For purposes of sections 951(b), 954(d)(3), 956(c)(2), and 957, section 318(a) (relating to constructive ownership of stock) shall apply to the extent that the effect is to treat any United States person as a United States shareholder within the meaning of section 951(b), to treat a person as a related person within the meaning of section 954(d)(3), to treat the stock of a domestic corporation as owned by a United States shareholder of the controlled foreign corporation for purposes of section 956(c)(2), or to treat a foreign corporation as a controlled foreign corporation under section 957, except that—

(1) In applying paragraph (1)(A) of section 318(a), stock owned by a nonresident alien individual (other than a foreign trust or foreign estate) shall not be considered as owned by a citizen or by a resident alien individual.

(2) In applying subparagraphs (A), (B), and (C) of section 318(a)(2), if a partnership, estate, trust, or corporation owns, directly or indirectly, more than 50 percent of the total combined voting power of all classes of stock entitled to vote of a corporation, it shall be considered as owning all the stock entitled to vote.

(3) In applying subparagraph (C) of section 318(a)(2), the phrase “10 percent” shall be substituted for the phrase “50 percent” used in subparagraph (C).

Paragraph (1) shall not apply for purposes of section 956(c)(2) to treat stock of a domestic corporation as not owned by a United States shareholder.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1018; amended Pub. L. 88-554, §4(b)(5), Aug. 31, 1964, 78 Stat. 763; Pub. L. 94-455, title X, §1021(b), Oct. 4, 1976, 90 Stat. 1619; Pub. L. 104-188, title I, §§1703(i)(4), 1704(t)(7), Aug. 20, 1996, 110 Stat. 1876, 1887; Pub. L. 115-97, title I, §§14213(a), 14301(c)(31), Dec. 22, 2017, 131 Stat. 2217, 2224.)

AMENDMENTS

2017—Subsec. (a)(1). Pub. L. 115-97, §14301(c)(31), substituted “960” for “960(a)(1)” in introductory provisions.

Subsec. (b). Pub. L. 115-97, §14213(a)(2), substituted “Paragraph (1)” for “Paragraphs (1) and (4)” in concluding provisions.

Subsec. (b)(4). Pub. L. 115-97, §14213(a)(1), struck out par. (4) which read as follows: “Subparagraphs (A), (B),

and (C) of section 318(a)(3) shall not be applied so as to consider a United States person as owning stock which is owned by a person who is not a United States person.”

1996—Subsec. (a)(1). Pub. L. 104-188, §1704(t)(7), substituted “section 960(a)(1)” for “sections 955(b)(1)(A) and (B), 955(c)(2)(A)(ii), and 960(a)(1)” in introductory provisions.

Subsec. (b). Pub. L. 104-188, §1703(i)(4), substituted “956(c)(2)” for “956(b)(2)” wherever appearing in introductory and closing provisions.

1976—Subsec. (b). Pub. L. 94-455 inserted “956(b)(2)” after “purposes of sections 951(b), 954(d)(3),”, “to treat the stock of a domestic corporation as owned by a United States shareholder of the controlled foreign corporation for purposes of section 956(b)(2)” after “meaning of section 954(d)(3)” and “Paragraphs (1) and (4) shall not apply for purposes of section 956(b)(2) to treat stock of a domestic corporation as not owned by a United States shareholder” following subpar. (4).

1964—Subsec. (b). Pub. L. 88-554 redesignated pars. (4) and (5) as (3) and (4), respectively, struck out former par. (3) which related to ownership of stock by a partnership, estate, trust, or corporation for purposes of applying first sentence of subpars. (A) and (B), and subpar. (C)(i) of section 318(a)(2) of this title, and made amendments throughout subsec. (b) to conform to changes made in section 318 of this title by Pub. L. 88-554.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-97, title I, §14213(b), Dec. 22, 2017, 131 Stat. 2217, provided that: “The amendments made by this section [amending this section] shall apply to—

“(1) the last taxable year of foreign corporations beginning before January 1, 2018, and each subsequent taxable year of such foreign corporations, and

“(2) taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.”

Amendment by section 14301(c)(31) of Pub. L. 115-97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14301(d) of Pub. L. 115-97, set out as a note under section 78 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1703(i)(4) of Pub. L. 104-188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103-66, §§13001-13444, to which such amendment relates, see section 1703(o) of Pub. L. 104-188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders within which or with which such taxable years of such corporations end, see section 1021(c) of Pub. L. 94-455, set out as a note under section 956 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88-554, set out as a note under section 318 of this title.

§ 959. Exclusion from gross income of previously taxed earnings and profits

(a) Exclusion from gross income of United States persons

For purposes of this chapter, the earnings and profits of a foreign corporation attributable to

amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a) shall not, when—

(1) such amounts are distributed to, or

(2) such amounts would, but for this subsection, be included under section 951(a)(1)(B) in the gross income of,

such shareholder (or any other United States person who acquires from any person any portion of the interest of such United States shareholder in such foreign corporation, but only to the extent of such portion, and subject to such proof of the identity of such interest as the Secretary may by regulations prescribe) directly or indirectly through a chain of ownership described under section 958(a), be again included in the gross income of such United States shareholder (or of such other United States person). The rules of subsection (c) shall apply for purposes of paragraph (1) of this subsection and the rules of subsection (f) shall apply for purposes of paragraph (2) of this subsection.

(b) Exclusion from gross income of certain foreign subsidiaries

For purposes of section 951(a), the earnings and profits of a controlled foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a), shall not, when distributed through a chain of ownership described under section 958(a), be also included in the gross income of another controlled foreign corporation in such chain for purposes of the application of section 951(a) to such other controlled foreign corporation with respect to such United States shareholder (or to any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder in the controlled foreign corporation, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations).

(c) Allocation of distributions

For purposes of subsections (a) and (b), section 316(a) shall be applied by applying paragraph (2) thereof, and then paragraph (1) thereof—

(1) first to the aggregate of—

(A) earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section), and

(B) earnings and profits attributable to amounts included in gross income under section 951(a)(1)(C) (or which would have been included except for subsection (a)(3) of this section),

with any distribution being allocated between earnings and profits described in subparagraph (A) and earnings and profits described in subparagraph (B) proportionately on the basis of the respective amounts of such earnings and profits,

(2) then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under subparagraph (B) or (C) of section 951(a)(1) because of the exclusions in

paragraphs (2) and (3) of subsection (a) of this section), and

(3) then to other earnings and profits.

References in this subsection to section 951(a)(1)(C) and subsection (a)(3) shall be treated as references to such provisions as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996.

(d) Distributions excluded from gross income not to be treated as dividends

Any distribution excluded from gross income under subsection (a) shall be treated, for purposes of this chapter, as a distribution which is not a dividend; except that such distributions shall immediately reduce earnings and profits.

(e) Coordination with amounts previously taxed under section 1248

For purposes of this section and section 960(c), any amount included in the gross income of any person as a dividend by reason of subsection (a) or (f) of section 1248 shall be treated as an amount included in the gross income of such person (or, in any case to which section 1248(e) applies, of the domestic corporation referred to in section 1248(e)(2)) under section 951(a)(1)(A).

(f) Allocation rules for certain inclusions

(1) In general

For purposes of this section, amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3).

(2) Treatment of distributions

In applying this section, actual distributions shall be taken into account before amounts that would be included under section 951(a)(1)(B) (determined without regard to this section).

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1019; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title I, §133(b)(1), July 18, 1984, 98 Stat. 668; Pub. L. 99-514, title XII, §1226(b), Oct. 22, 1986, 100 Stat. 2560; Pub. L. 100-647, title I, §1012(bb)(7)(A), Nov. 10, 1988, 102 Stat. 3536; Pub. L. 103-66, title XIII, §13231(c)(1), (2), (4)(A), (B), Aug. 10, 1993, 107 Stat. 497, 498; Pub. L. 104-188, title I, §1501(b)(4)-(8), Aug. 20, 1996, 110 Stat. 1826; Pub. L. 115-97, title I, §14301(c)(32), (33), Dec. 22, 2017, 131 Stat. 2224.)

REFERENCES IN TEXT

The date of the enactment of the Small Business Job Protection Act of 1996, referred to in subsec. (c), is the date of enactment of Pub. L. 104-188, which was approved Aug. 20, 1996.

AMENDMENTS

2017—Subsec. (d). Pub. L. 115-97, §14301(c)(32), substituted “Any” for “Except as provided in section 960(a)(3), any”.

Subsec. (e). Pub. L. 115-97, §14301(c)(33), substituted “section 960(c)” for “section 960(b)”.

1996—Subsec. (a). Pub. L. 104-188, §1501(b)(4), (5), substituted “paragraph (2)” for “paragraphs (2) and (3)” in closing provisions, inserted “or” at end of par. (1),

struck out “or” at end of par. (2), and struck out par. (3) which read as follows: “such amounts would, but for this subsection, be included under section 951(a)(1)(C) in the gross income of.”

Subsec. (c). Pub. L. 104-188, §1501(b)(6), inserted at end “References in this subsection to section 951(a)(1)(C) and subsection (a)(3) shall be treated as references to such provisions as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996.”

Subsec. (f)(1). Pub. L. 104-188, §1501(b)(7), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “For purposes of this section—

“(A) amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3), and

“(B) amounts that would be included under subparagraph (C) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2) to the extent the earnings so described were accumulated in taxable years beginning after September 30, 1993, and then to earnings described in subsection (c)(3).”

Subsec. (f)(2). Pub. L. 104-188, §1501(b)(8), substituted “section 951(a)(1)(B)” for “subparagraphs (B) and (C) of section 951(a)(1)”.

1993—Subsec. (a). Pub. L. 103-66, §13231(c)(2)(A), (4)(A), substituted in introductory provisions “earnings and profits” for “earnings and profits for taxable year” and inserted at end of closing provisions “The rules of subsection (c) shall apply for purposes of paragraph (1) of this subsection and the rules of subsection (f) shall apply for purposes of paragraphs (2) and (3) of this subsection.”

Subsec. (a)(3). Pub. L. 103-66, §13231(c)(1), added par. (3).

Subsec. (b). Pub. L. 103-66, §13231(c)(4)(A), substituted “earnings and profits” for “earnings and profits for a taxable year”.

Subsec. (c)(1). Pub. L. 103-66, §13231(c)(2)(C), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “first to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section).”

Subsec. (c)(2). Pub. L. 103-66, §13231(c)(4)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under section 951(a)(1)(B) because of the exclusion in subsection (a)(2) of this section), and”.

Subsec. (f). Pub. L. 103-66, §13231(c)(2)(B), added subsec. (f).

1988—Subsec. (e). Pub. L. 100-647 substituted “such person (or, in any case to which section 1248(e) applies, of the domestic corporation referred to in section 1248(e)(2)) under” for “such person under”.

1986—Subsec. (d). Pub. L. 99-514 inserted “; except that such distributions shall immediately reduce earnings and profits”.

1984—Subsec. (e). Pub. L. 98-369 added subsec. (e).

1976—Subsecs. (a), (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14301(d) of Pub. L. 115-97, set out as a note under section 78 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years of foreign corporations beginning after Dec. 31,

1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104-188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103-66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1012(bb)(7)(B), Nov. 10, 1988, 102 Stat. 3536, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply in the case of transactions to which section 1248(e) of the 1986 Code applies and which occur after December 31, 1986."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XII, §1226(c)(2), Oct. 22, 1986, 100 Stat. 2560, provided that: "The amendment made by subsection (b) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, §133(d)(2), (3), July 18, 1984, 98 Stat. 668, as amended by Pub. L. 99-514, §2, title XVIII, §1810(i)(2), Oct. 22, 1986, 100 Stat. 2095, 2829; Pub. L. 100-647, title I, §1018(g)(2), Nov. 10, 1988, 102 Stat. 3582, provided that:

"(2) SUBSECTIONS (b) AND (c).—Except as provided in paragraph (3), the amendments made by subsections (b) and (c) [amending this section and section 1248 of this title] shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies occurring after the date of the enactment of this Act [July 18, 1984].

"(3) ELECTION OF EARLIER DATE FOR CERTAIN TRANSACTIONS.—

"(A) IN GENERAL.—If the appropriate election is made under subparagraph (B), the amendments made by subsection (b) [amending this section and section 1248 of this title] shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of such Code applies occurring after October 9, 1975.

"(B) ELECTION.—

"(i) Subparagraph (A) shall apply with respect to transactions to which subsection (a) of section 1248 of such Code applies if the foreign corporation described in such subsection (or its successor in interest) so elects.

"(ii) Subparagraph (A) shall apply with respect to transactions to which subsection (f) of section 1248 of such Code applies if the domestic corporation described in section 1248(f)(1) of such Code (or its successor) so elects.

"(iii) Any election under clause (i) or (ii) shall be made not later than the date which is 1 year after the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986] and shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe."

§ 960. Deemed paid credit for subpart F inclusions

(a) In general

For purposes of subpart A of this part, if there is included in the gross income of a domestic corporation any item of income under section 951(a)(1) with respect to any controlled foreign corporation with respect to which such domestic corporation is a United States shareholder, such

domestic corporation shall be deemed to have paid so much of such foreign corporation's foreign income taxes as are properly attributable to such item of income.

(b) Special rules for distributions from previously taxed earnings and profits

For purposes of subpart A of this part—

(1) In general

If any portion of a distribution from a controlled foreign corporation to a domestic corporation which is a United States shareholder with respect to such controlled foreign corporation is excluded from gross income under section 959(a), such domestic corporation shall be deemed to have paid so much of such foreign corporation's foreign income taxes as—

(A) are properly attributable to such portion, and

(B) have not been deemed to have to¹ been paid by such domestic corporation under this section for the taxable year or any prior taxable year.

(2) Tiered controlled foreign corporations

If section 959(b) applies to any portion of a distribution from a controlled foreign corporation to another controlled foreign corporation, such controlled foreign corporation shall be deemed to have paid so much of such other controlled foreign corporation's foreign income taxes as—

(A) are properly attributable to such portion, and

(B) have not been deemed to have been paid by a domestic corporation under this section for the taxable year or any prior taxable year.

(c) Special rules for foreign tax credit in year of receipt of previously taxed earnings and profits

(1) Increase in section 904 limitation

In the case of any taxpayer who—

(A) either (i) chose to have the benefits of subpart A of this part for a taxable year beginning after September 30, 1993, in which he was required under section 951(a) to include any amount in his gross income, or (ii) did not pay or accrue for such taxable year any income, war profits, or excess profits taxes to any foreign country or to any possession of the United States,

(B) chooses to have the benefits of subpart A of this part for any taxable year in which he receives 1 or more distributions or amounts which are excludable from gross income under section 959(a) and which are attributable to amounts included in his gross income for taxable years referred to in subparagraph (A), and

(C) for the taxable year in which such distributions or amounts are received, pays, or is deemed to have paid, or accrues income, war profits, or excess profits taxes to a foreign country or to any possession of the United States with respect to such distributions or amounts,

the limitation under section 904 for the taxable year in which such distributions or

¹ So in original.

amounts are received shall be increased by the lesser of the amount of such taxes paid, or deemed paid, or accrued with respect to such distributions or amounts or the amount in the excess limitation account as of the beginning of such taxable year.

(2) Excess limitation account

(A) Establishment of account

Each taxpayer meeting the requirements of paragraph (1)(A) shall establish an excess limitation account. The opening balance of such account shall be zero.

(B) Increases in account

For each taxable year beginning after September 30, 1993, the taxpayer shall increase the amount in the excess limitation account by the excess (if any) of—

(i) the amount by which the limitation under section 904(a) for such taxable year was increased by reason of the total amount of the inclusions in gross income under section 951(a) for such taxable year, over

(ii) the amount of any income, war profits, and excess profits taxes paid, or deemed paid, or accrued to any foreign country or possession of the United States which were allowable as a credit under section 901 for such taxable year and which would not have been allowable but for the inclusions in gross income described in clause (i).

Proper reductions in the amount added to the account under the preceding sentence for any taxable year shall be made for any increase in the credit allowable under section 901 for such taxable year by reason of a carryback if such increase would not have been allowable but for the inclusions in gross income described in clause (i).

(C) Decreases in account

For each taxable year beginning after September 30, 1993, for which the limitation under section 904 was increased under paragraph (1), the taxpayer shall reduce the amount in the excess limitation account by the amount of such increase.

(3) Distributions of income previously taxed in years beginning before October 1, 1993

If the taxpayer receives a distribution or amount in a taxable year beginning after September 30, 1993, which is excluded from gross income under section 959(a) and is attributable to any amount included in gross income under section 951(a) for a taxable year beginning before October 1, 1993, the limitation under section 904 for the taxable year in which such amount or distribution is received shall be increased by the amount determined under this subsection as in effect on the day before the date of the enactment of the Revenue Reconciliation² Act of 1993.

(4) Cases in which taxes not to be allowed as deduction

In the case of any taxpayer who—

(A) chose to have the benefits of subpart A of this part for a taxable year in which he was required under section 951(a) to include in his gross income an amount in respect of a controlled foreign corporation, and

(B) does not choose to have the benefits of subpart A of this part for the taxable year in which he receives a distribution or amount which is excluded from gross income under section 959(a) and which is attributable to earnings and profits of the controlled foreign corporation which was included in his gross income for the taxable year referred to in subparagraph (A),

no deduction shall be allowed under section 164 for the taxable year in which such distribution or amount is received for any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States on or with respect to such distribution or amount.

(5) Insufficient taxable income

If an increase in the limitation under this subsection exceeds the tax imposed by this chapter for such year, the amount of such excess shall be deemed an overpayment of tax for such year.

(d) Deemed paid credit for taxes properly attributable to tested income

(1) In general

For purposes of subpart A of this part, if any amount is includible in the gross income of a domestic corporation under section 951A, such domestic corporation shall be deemed to have paid foreign income taxes equal to 80 percent of the product of—

(A) such domestic corporation's inclusion percentage, multiplied by

(B) the aggregate tested foreign income taxes paid or accrued by controlled foreign corporations.

(2) Inclusion percentage

For purposes of paragraph (1), the term "inclusion percentage" means, with respect to any domestic corporation, the ratio (expressed as a percentage) of—

(A) such corporation's global intangible low-taxed income (as defined in section 951A(b)), divided by

(B) the aggregate amount described in section 951A(c)(1)(A) with respect to such corporation.

(3) Tested foreign income taxes

For purposes of paragraph (1), the term "tested foreign income taxes" means, with respect to any domestic corporation which is a United States shareholder of a controlled foreign corporation, the foreign income taxes paid or accrued by such foreign corporation which are properly attributable to the tested income of such foreign corporation taken into account by such domestic corporation under section 951A.

(e) Foreign income taxes

The term "foreign income taxes" means any income, war profits, or excess profits taxes paid or accrued to any foreign country or possession of the United States.

² So in original. Probably should be "Reconciliation".

(f) Regulations

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this section.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1020; amended Pub. L. 94-455, title X, §§1031(b)(1), 1033(b)(2), 1037(a), Oct. 4, 1976, 90 Stat. 1622, 1628, 1633; Pub. L. 99-514, title XII, §1202(b), Oct. 22, 1986, 100 Stat. 2530; Pub. L. 103-66, title XIII, §13233(b)(1), Aug. 10, 1993, 107 Stat. 502; Pub. L. 105-34, title XI, §1113(b), Aug. 5, 1997, 111 Stat. 971; Pub. L. 111-226, title II, §214(a), Aug. 10, 2010, 124 Stat. 2399; Pub. L. 115-97, title I, §§14201(b)(1), 14301(b), Dec. 22, 2017, 131 Stat. 2212, 2221.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1993, referred to in subsec. (c)(3), is the date of enactment of Pub. L. 103-66, which was approved Aug. 10, 1993.

AMENDMENTS

2017—Pub. L. 115-97, §14301(b)(1), substituted “Deemed paid credit for subpart F inclusions” for “Special rules for foreign tax credit” in section catchline.

Subsecs. (a) to (c). Pub. L. 115-97, §14301(b)(1), added subsecs. (a) and (b), redesignated former subsec. (b) as (c), and struck out former subsecs. (a) and (c) which related to taxes paid by a foreign corporation and limitation with respect to section 956 inclusions, respectively.

Subsec. (d). Pub. L. 115-97, §14201(b)(1), added subsec. (d).

Subsecs. (e), (f). Pub. L. 115-97, §14301(b)(2), added subsecs. (e) and (f).

2010—Subsec. (c). Pub. L. 111-226 added subsec. (c).

1997—Subsec. (a)(1). Pub. L. 105-34 amended heading and text of par. (1) generally. Prior to amendment, text read as follows: “For purposes of subpart A of this part, if there is included, under section 951(a), in the gross income of a domestic corporation any amount attributable to earnings and profits—

“(A) of a foreign corporation (hereafter in this subsection referred to as the ‘first foreign corporation’) at least 10 percent of the voting stock of which is owned by such domestic corporation, or

“(B) of a second foreign corporation (hereinafter in this subsection referred to as the ‘second foreign corporation’) at least 10 percent of the voting stock of which is owned by the first foreign corporation, or

“(C) of a third foreign corporation (hereinafter in this subsection referred to as the ‘third foreign corporation’) at least 10 percent of the voting stock of which is owned by the second foreign corporation,

then, except to the extent provided in regulations, such domestic corporation shall be deemed to have paid a portion of such foreign corporation’s post-1986 foreign income taxes determined under section 902 in the same manner as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B)). This paragraph shall not apply with respect to any amount included in the gross income of such domestic corporation attributable to earnings and profits of the second foreign corporation or of the third foreign corporation unless, in the case of the second foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(A) is satisfied, and in the case of the third foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(B) is satisfied.”

1993—Subsec. (b). Pub. L. 103-66 added pars. (1) to (3), redesignated former pars. (3) and (4) as (4) and (5), respectively, and struck out former par. (1) relating to increase in section 904 limitation and former par. (2) relating to the amount of increase.

1986—Subsec. (a)(1). Pub. L. 99-514 substituted “then, except to the extent provided in regulations, such domestic corporation shall be deemed to have paid a portion of such foreign corporation’s post-1986 foreign income taxes determined under section 902 in the same manner as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B))” for “then, under regulations prescribed by the Secretary, such domestic corporation shall be deemed to have paid the same proportion of the total income, war profits, and excess profits taxes paid (or deemed paid) by such foreign corporation to a foreign country or possession of the United States for the taxable year on or with respect to the earnings and profits of such foreign corporation which the amount of earnings and profits of such foreign corporation so included in gross income of the domestic corporation bears to the entire amount of the earnings and profits of such corporation for such taxable year”.

1976—Subsec. (a)(1). Pub. L. 94-455, §§1033(b)(2), 1037(a), substituted “bears to” for “bears to—” after “gross income of the domestic corporation”, struck out subpars. (C) and (D) relating to corporations which are and are not less developed country corporations, inserted in subpar. (A) “(hereafter in this subsection referred to as the ‘first foreign corporation’)” after “foreign corporation”, substituted in subpar. (B) “of a second foreign corporation (hereinafter in this subsection referred to as the ‘second foreign corporation’) at least 10 percent of the voting stock of which is owned by the first foreign corporation, or” for “of a foreign corporation at least 50 percent of the voting stock of which is owned by a foreign corporation at least 10 percent of the voting stock of which in turn owned by such domestic corporation” after “(B)”, added subpar. (C), and inserted at end “This paragraph shall not apply with respect to any amount included in the gross income of such domestic corporation attributable to earnings and profits of the second foreign corporation or of the third foreign corporation unless, in the case of the second foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(A) is satisfied, and in the case of the third foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(B) is satisfied.”

Subsec. (b). Pub. L. 94-455, §1031(b)(1), struck out “applicable” in par. (1) after “amount, the”, in par. (2) after “increase of the”, and in subpar. (A) of par. (2) after “by which the”.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 14201(b)(1) of Pub. L. 115-97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14201(d) of Pub. L. 115-97, set out as a note under section 904 of this title.

Amendment by section 14301(b) of Pub. L. 115-97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14301(d) of Pub. L. 115-97, set out as a note under section 78 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-226, title II, §214(b), Aug. 10, 2010, 124 Stat. 2399, provided that: “The amendment made by this section [amending this section] shall apply to acquisitions of United States property (as defined in section 956(c) of the Internal Revenue Code of 1986) after December 31, 2010.”

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XI, §1113(c), Aug. 5, 1997, 111 Stat. 971, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 902 of this title] shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of enactment of this Act [Aug. 5, 1997].

“(2) SPECIAL RULE.—In the case of any chain of foreign corporations described in clauses (i) and (ii) of [former] section 902(b)(2)(B) of the Internal Revenue Code of 1986 (as amended by this section), no liquidation, reorganization, or similar transaction in a taxable year beginning after the date of the enactment of this Act shall have the effect of permitting taxes to be taken into account under section 902 of the Internal Revenue Code of 1986 which could not have been taken into account under such section but for such transaction.”

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-66, title XIII, §13233(b)(2), Aug. 10, 1993, 107 Stat. 504, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after September 30, 1993.”

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XII, §1202(e), Oct. 22, 1986, 100 Stat. 2531, provided that: “The amendments made by this section [amending this section and sections 902 and 6038 of this title] shall apply to distributions by foreign corporations out of, and to inclusions under section 951(a) of the Internal Revenue Code of 1986 attributable to, earnings and profits for taxable years beginning after December 31, 1986.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(1) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1975, see section 1031(c) of Pub. L. 94-455, set out as a note under section 904 of this title.

Pub. L. 94-455, title X, §1033(c), Oct. 4, 1976, 90 Stat. 1628, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [amending this section and sections 78, 535, 545, and 902 of this title] shall apply—

“(1) in respect of any distribution received by a domestic corporation after December 31, 1977, and

“(2) in respect of any distribution received by a domestic corporation before January 1, 1978, in a taxable year of such corporation beginning after December 31, 1975, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after December 31, 1975.

For purposes of paragraph (2), a distribution made by a foreign corporation out of its profits which are attributable to a distribution received from a foreign corporation to which [former] section 902(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies shall be treated as made out of the accumulated profits of a foreign corporation for a taxable year beginning before January 1, 1976, to the extent that such distribution was paid out of the accumulated profits of such foreign corporation for a taxable year beginning before January 1, 1976.”

Pub. L. 94-455, title X, §1037(b), Oct. 4, 1976, 90 Stat. 1634, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment made by this section [amending this section] shall apply with respect to earnings and profits of a foreign corporation, included, under section 951(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the gross income of a domestic corporation in taxable years beginning after December 31, 1976.”

INCREASE IN EARNINGS AND PROFITS OF FOREIGN CORPORATIONS UNDER SECTION 1023(e)(3)(C) OF PUB. L. 99-514

Pub. L. 100-647, title I, §1012(b)(3), Nov. 10, 1988, 102 Stat. 3496, provided that: “For purposes of sections [former] 902 and 960 of the 1986 Code, the increase in

earnings and profits of any foreign corporation under section 1023(e)(3)(C) of the Reform Act [Pub. L. 99-514, set out as an Effective Date note under section 846 of this title] shall be taken into account ratably over the 10-year period beginning with the corporation's first taxable year beginning after December 31, 1986.”

§ 961. Adjustments to basis of stock in controlled foreign corporations and of other property

(a) Increase in basis

Under regulations prescribed by the Secretary, the basis of a United States shareholder's stock in a controlled foreign corporation, and the basis of property of a United States shareholder by reason of which he is considered under section 958(a)(2) as owning stock of a controlled foreign corporation, shall be increased by the amount required to be included in his gross income under section 951(a) with respect to such stock or with respect to such property, as the case may be, but only to the extent to which such amount was included in the gross income of such United States shareholder. In the case of a United States shareholder who has made an election under section 962 for the taxable year, the increase in basis provided by this subsection shall not exceed an amount equal to the amount of tax paid under this chapter with respect to the amounts required to be included in his gross income under section 951(a).

(b) Reduction in basis

(1) In general

Under regulations prescribed by the Secretary, the adjusted basis of stock or other property with respect to which a United States shareholder or a United States person receives an amount which is excluded from gross income under section 959(a) shall be reduced by the amount so excluded. In the case of a United States shareholder who has made an election under section 962 for any prior taxable year, the reduction in basis provided by this paragraph shall not exceed an amount equal to the amount received which is excluded from gross income under section 959(a) after the application of section 962(d).

(2) Amount in excess of basis

To the extent that an amount excluded from gross income under section 959(a) exceeds the adjusted basis of the stock or other property with respect to which it is received, the amount shall be treated as gain from the sale or exchange of property.

(c) Basis adjustments in stock held by foreign corporations

Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning stock in a controlled foreign corporation which is owned by another controlled foreign corporation, then adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to—

(1) the basis of such stock, and

(2) the basis of stock in any other controlled foreign corporation by reason of which the United States shareholder is considered under section 958(a)(2) as owning the stock described in paragraph (1),

but only for the purposes of determining the amount included under section 951 in the gross

income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations). The preceding sentence shall not apply with respect to any stock to which a basis adjustment applies under subsection (a) or (b).

(d) Basis in specified 10-percent owned foreign corporation reduced by nontaxed portion of dividend for purposes of determining loss

If a domestic corporation received a dividend from a specified 10-percent owned foreign corporation (as defined in section 245A) in any taxable year, solely for purposes of determining loss on any disposition of stock of such foreign corporation in such taxable year or any subsequent taxable year, the basis of such domestic corporation in such stock shall be reduced (but not below zero) by the amount of any deduction allowable to such domestic corporation under section 245A with respect to such stock except to the extent such basis was reduced under section 1059 by reason of a dividend for which such a deduction was allowable.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1022; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105-34, title XI, §1112(b)(1), Aug. 5, 1997, 111 Stat. 969; Pub. L. 109-135, title IV, §409(b), Dec. 21, 2005, 119 Stat. 2635; Pub. L. 115-97, title I, §14102(b)(1), Dec. 22, 2017, 131 Stat. 2192.)

AMENDMENTS

2017—Subsec. (d). Pub. L. 115-97 added subsec. (d).
2005—Subsec. (c). Pub. L. 109-135 amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: “Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning any stock in a controlled foreign corporation which is actually owned by another controlled foreign corporation, adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to the basis of such stock in the hands of such other controlled foreign corporation, but only for the purposes of determining the amount included under section 951 in the gross income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations).”

1997—Subsec. (c). Pub. L. 105-34 added subsec. (c).

1976—Subsecs. (a), (b)(1). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-97, title I, §14102(b)(2), Dec. 22, 2017, 131 Stat. 2192, provided that: “The amendments made by this subsection [amending this section] shall apply to distributions made after December 31, 2017.”

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-135, title IV, §409(d), Dec. 21, 2005, 119 Stat. 2636, provided that: “The amendments made by this section [amending this section and sections 6038B, 6411, and 6601 of this title] shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997 [Pub. L. 105-34] to which they relate.”

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XI, §1112(b)(2), Aug. 5, 1997, 111 Stat. 969, provided that: “The amendment made by paragraph (1) [amending this section] shall apply for purposes of determining inclusions for taxable years of United States shareholders beginning after December 31, 1997.”

DUAL RESIDENT COMPANIES

Basis adjustments of this section not applicable in certain circumstances involving dual resident companies, see section 6126 of Pub. L. 100-647, set out as a note under section 1502 of this title.

§ 962. Election by individuals to be subject to tax at corporate rates

(a) General rule

Under regulations prescribed by the Secretary, in the case of a United States shareholder who is an individual and who elects to have the provisions of this section apply for the taxable year—

(1) the tax imposed under this chapter on amounts which are included in his gross income under section 951(a) shall (in lieu of the tax determined under sections 1 and 55) be an amount equal to the tax which would be imposed under section 11 if such amounts were received by a domestic corporation, and

(2) for purposes of applying the provisions of section 960¹ (relating to foreign tax credit) such amounts shall be treated as if they were received by a domestic corporation.

(b) Election

An election to have the provisions of this section apply for any taxable year shall be made by a United States shareholder at such time and in such manner as the Secretary shall prescribe by regulations. An election made for any taxable year may not be revoked except with the consent of the Secretary.

(c) Pro ration of each section 11 bracket amount

For purposes of applying subsection (a)(1), the amount in each taxable income bracket in the tax table in section 11(b) shall not exceed an amount which bears the same ratio to such bracket amount as the amount included in the gross income of the United States shareholder under section 951(a) for the taxable year bears to such shareholder's pro rata share of the earnings and profits for the taxable year of all controlled foreign corporations with respect to which such shareholder includes any amount in gross income under section 951(a).

(d) Special rule for actual distributions

The earnings and profits of a foreign corporation attributable to amounts which were included in the gross income of a United States shareholder under section 951(a) and with respect to which an election under this section applied shall, when such earnings and profits are distributed, notwithstanding the provisions of section 959(a)(1), be included in gross income to the extent that such earnings and profits so distributed exceed the amount of tax paid under this chapter on the amounts to which such election applied.

¹ See References in Text note below.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1023; amended Pub. L. 94-12, title III, §303(c)(3), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94-164, §4(d)(1), Dec. 23, 1975, 89 Stat. 975; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title III, §301(b)(16), Nov. 6, 1978, 92 Stat. 2822; Pub. L. 100-647, title I, §1007(g)(11), Nov. 10, 1988, 102 Stat. 3435; Pub. L. 115-97, title I, §12001(b)(15), Dec. 22, 2017, 131 Stat. 2094.)

REFERENCES IN TEXT

Section 960, referred to in subsec. (a)(2), was amended extensively by Pub. L. 115-97, and, as so amended, relates to deemed paid credit for subpart F inclusions.

AMENDMENTS

2017—Subsec. (a)(1). Pub. L. 115-97 substituted “section 11” for “sections 11 and 55”.

1988—Subsec. (a)(1). Pub. L. 100-647 substituted “sections 1 and 55” and “sections 11 and 55” for “section 1” and “section 11”, respectively.

1978—Subsec. (c). Pub. L. 95-600 substituted provisions relating to the pro ratio of each section 11 bracket amount for provisions relating to the surtax exemption.

1976—Subsecs. (a), (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

1975—Subsec. (c). Pub. L. 94-164 substituted “same ratio to the surtax exemption” for “same ratio to \$25,000” in subsec. (c) as such subsec. (c) is in effect for taxable years ending after Dec. 31, 1975.

Pub. L. 94-12 substituted “\$50,000” for “\$25,000”.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 12001(c) of Pub. L. 115-97, set out as a note under section 11 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 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as a note under section 11 of this title.

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENTS

Amendment by Pub. L. 94-164 applicable to taxable years beginning after Dec. 31, 1975, see section 4(e) of Pub. L. 94-164, set out as a note under section 11 of this title.

Amendment by Pub. L. 94-12 applicable to taxable years ending after Dec. 31, 1974, but to cease to apply for taxable years ending after Dec. 31, 1975, see section 305(b)(1) of Pub. L. 94-12, set out as a note under section 11 of this title.

[§ 963. Repealed. Pub. L. 94-12, title VI, § 602(a)(1), Mar. 29, 1975, 89 Stat. 58]

Section, added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1023; amended Pub. L. 88-272, title I, §123(b), Feb. 26, 1964, 78 Stat. 29; Pub. L. 90-364, title I, §102(b), June 28, 1968, 82 Stat. 255; Pub. L. 91-53, §5(b), Aug. 7, 1969, 83 Stat. 95; Pub. L. 91-172, title VII, §701(b), Dec. 30, 1969, 83 Stat. 659, dealt with the receipt of minimum distributions by domestic corporations.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years for foreign corporations beginning after Dec. 31, 1975, and to

taxable years of United States shareholders (within the meaning of section 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94-12, set out as an Effective Date note under section 954 of this title.

§ 964. Miscellaneous provisions

(a) Earnings and profits

Except as provided in section 312(k)(4), for purposes of this subpart, the earnings and profits of any foreign corporation, and the deficit in earnings and profits of any foreign corporation, for any taxable year shall be determined according to rules substantially similar to those applicable to domestic corporations, under regulations prescribed by the Secretary. In determining such earnings and profits, or the deficit in such earnings and profits, the amount of any illegal bribe, kickback, or other payment (within the meaning of section 162(c)) shall not be taken into account to decrease such earnings and profits or to increase such deficit. The payments referred to in the preceding sentence are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person.

(b) Blocked foreign income

Under regulations prescribed by the Secretary, no part of the earnings and profits of a controlled foreign corporation for any taxable year shall be included in earnings and profits for purposes of sections 952 and 956, if it is established to the satisfaction of the Secretary that such part could not have been distributed by the controlled foreign corporation to United States shareholders who own (within the meaning of section 958(a)) stock of such controlled foreign corporation because of currency or other restrictions or limitations imposed under the laws of any foreign country.

(c) Records and accounts of United States shareholders

(1) Records and accounts to be maintained

The Secretary may by regulations require each person who is, or has been, a United States shareholder of a controlled foreign corporation to maintain such records and accounts as may be prescribed by such regulations as necessary to carry out the provisions of this subpart and subpart G.

(2) Two or more persons required to maintain or furnish the same records and accounts with respect to the same foreign corporation

Where, but for this paragraph, two or more United States persons would be required to maintain or furnish the same records and accounts as may be prescribed by regulations under paragraph (1) with respect to the same controlled foreign corporation for the same period, the Secretary may by regulations provide that the maintenance or furnishing of such records and accounts by only one such person shall satisfy the requirements of paragraph (1) for such other persons.

(d) Treatment of certain branches

(1) In general

For purposes of this chapter, section 6038, section 6046, and such other provisions as may be specified in regulations—

(A) a qualified insurance branch of a controlled foreign corporation shall be treated as a separate foreign corporation created under the laws of the foreign country with respect to which such branch qualifies under paragraph (2), and

(B) except as provided in regulations, any amount directly or indirectly transferred or credited from such branch to one or more other accounts of such controlled foreign corporation shall be treated as a dividend paid to such controlled foreign corporation.

(2) Qualified insurance branch

For purposes of paragraph (1), the term “qualified insurance branch” means any branch of a controlled foreign corporation which is licensed and predominantly engaged on a permanent basis in the active conduct of an insurance business in a foreign country if—

(A) separate books and accounts are maintained for such branch,

(B) the principal place of business of such branch is in such foreign country,

(C) such branch would be taxable under subchapter L if it were a separate domestic corporation, and

(D) an election under this paragraph applies to such branch.

An election under this paragraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(3) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(e) Gain on certain stock sales by controlled foreign corporations treated as dividends

(1) In general

If a controlled foreign corporation sells or exchanges stock in any other foreign corporation, gain recognized on such sale or exchange shall be included in the gross income of such controlled foreign corporation as a dividend to the same extent that it would have been so included under section 1248(a) if such controlled foreign corporation were a United States person. For purposes of determining the amount which would have been so includible, the determination of whether such other foreign corporation was a controlled foreign corporation shall be made without regard to the preceding sentence.

(2) Same country exception not applicable

Clause (i) of section 954(c)(3)(A) shall not apply to any amount treated as a dividend by reason of paragraph (1).

(3) Clarification of deemed sales

For purposes of this subsection, a controlled foreign corporation shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such controlled foreign corporation is treated as having gain from the sale or exchange of such stock.

(4) Coordination with dividends received deduction

(A) In general

If, for any taxable year of a controlled foreign corporation beginning after December

31, 2017, any amount is treated as a dividend under paragraph (1) by reason of a sale or exchange by the controlled foreign corporation of stock in another foreign corporation held for 1 year or more, then, notwithstanding any other provision of this title—

(i) the foreign-source portion of such dividend shall be treated for purposes of section 951(a)(1)(A) as subpart F income of the selling controlled foreign corporation for such taxable year,

(ii) a United States shareholder with respect to the selling controlled foreign corporation shall include in gross income for the taxable year of the shareholder with or within which such taxable year of the controlled foreign corporation ends an amount equal to the shareholder’s pro rata share (determined in the same manner as under section 951(a)(2)) of the amount treated as subpart F income under clause (i), and

(iii) the deduction under section 245A(a) shall be allowable to the United States shareholder with respect to the subpart F income included in gross income under clause (ii) in the same manner as if such subpart F income were a dividend received by the shareholder from the selling controlled foreign corporation.

(B) Application of basis or similar adjustment

For purposes of this title, in the case of a sale or exchange by a controlled foreign corporation of stock in another foreign corporation in a taxable year of the selling controlled foreign corporation beginning after December 31, 2017, rules similar to the rules of section 961(d) shall apply.

(C) Foreign-source portion

For purposes of this paragraph, the foreign-source portion of any amount treated as a dividend under paragraph (1) shall be determined in the same manner as under section 245A(c).

(Added Pub. L. 87–834, §12(a), Oct. 16, 1962, 76 Stat. 1027; amended Pub. L. 91–172, title IV, §442(b)(1), Dec. 30, 1969, 83 Stat. 628; Pub. L. 94–455, title X, §1065(b), title XIX, §§1901(b)(32)(B)(iii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1654, 1800, 1834; Pub. L. 97–34, title II, §206(c), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97–248, title II, §288(b)(2), Sept. 3, 1982, 96 Stat. 571; Pub. L. 100–647, title VI, §6129(a), Nov. 10, 1988, 102 Stat. 3716; Pub. L. 105–34, title XI, §1111(a), Aug. 5, 1997, 111 Stat. 968; Pub. L. 115–97, title I, §§14102(c)(1), 14212(b)(4), Dec. 22, 2017, 131 Stat. 2193, 2217.)

REFERENCES IN TEXT

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (a), is title I of Pub. L. 95–213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd–1 to 78dd–3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

AMENDMENTS

2017—Subsec. (b). Pub. L. 115–97, §14212(b)(4), struck out “, 955,” after “sections 952”.

Subsec. (e)(4). Pub. L. 115-97, §14102(c)(1), added par. (4).

1997—Subsec. (e). Pub. L. 105-34 added subsec. (e).

1988—Subsec. (d). Pub. L. 100-647 added subsec. (d).

1982—Subsec. (a). Pub. L. 97-248 inserted provision that payments referred to in sentence beginning “In determining such earnings and profits” are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person.

1981—Subsec. (a). Pub. L. 97-34 substituted “section 312(k)(4)” for “section 312(k)(3)”.

1976—Subsec. (a). Pub. L. 94-455, §§1065(b), 1901(b)(32)(B)(ii), 1906(b)(13)(A), struck out “or his delegate” after “Secretary”, inserted second sentence, and substituted “312(k)(3)” for “312(m)(3)” after “provided in section”.

Subsecs. (b), (c)(1), (2). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary” whenever appearing.

1969—Subsec. (a). Pub. L. 91-172 inserted reference to the exception provided for in section 312(m)(3).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-97, title I, §14102(c)(2), Dec. 22, 2017, 131 Stat. 2193, provided that: “The amendments made by this subsection [amending this section] shall apply to sales or exchanges after December 31, 2017.”

Amendment by section 14212(b)(4) of Pub. L. 115-97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14212(c) of Pub. L. 115-97, set out as a note under section 851 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XI, §1111(c)(1), Aug. 5, 1997, 111 Stat. 969, provided that: “The amendment made by subsection (a) [amending this section] shall apply to gain recognized on transactions occurring after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title VI, §6129(b), Nov. 10, 1988, 102 Stat. 3716, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1988.”

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to payments made after Sept. 3, 1982, see section 288(c) of Pub. L. 97-248, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97-34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1065(b) of Pub. L. 94-455 applicable to payments described in section 162(c) of this title made more than 30 days after Oct. 4, 1976, see section 1066(b) of Pub. L. 94-455, set out as a note under section 952 of this title.

§ 965. Treatment of deferred foreign income upon transition to participation exemption system of taxation

(a) Treatment of deferred foreign income as subpart F income

In the case of the last taxable year of a deferred foreign income corporation which begins before January 1, 2018, the subpart F income of

such foreign corporation (as otherwise determined for such taxable year under section 952) shall be increased by the greater of—

(1) the accumulated post-1986 deferred foreign income of such corporation determined as of November 2, 2017, or

(2) the accumulated post-1986 deferred foreign income of such corporation determined as of December 31, 2017.

(b) Reduction in amounts included in gross income of United States shareholders of specified foreign corporations with deficits in earnings and profits

(1) In general

In the case of a taxpayer which is a United States shareholder with respect to at least one deferred foreign income corporation and at least one E&P deficit foreign corporation, the amount which would (but for this subsection) be taken into account under section 951(a)(1) by reason of subsection (a) as such United States shareholder's pro rata share of the subpart F income of each deferred foreign income corporation shall be reduced by the amount of such United States shareholder's aggregate foreign E&P deficit which is allocated under paragraph (2) to such deferred foreign income corporation.

(2) Allocation of aggregate foreign E&P deficit

The aggregate foreign E&P deficit of any United States shareholder shall be allocated among the deferred foreign income corporations of such United States shareholder in an amount which bears the same proportion to such aggregate as—

(A) such United States shareholder's pro rata share of the accumulated post-1986 deferred foreign income of each such deferred foreign income corporation, bears to

(B) the aggregate of such United States shareholder's pro rata share of the accumulated post-1986 deferred foreign income of all deferred foreign income corporations of such United States shareholder.

(3) Definitions related to E&P deficits

For purposes of this subsection—

(A) Aggregate foreign E&P deficit

(i) In general

The term “aggregate foreign E&P deficit” means, with respect to any United States shareholder, the lesser of—

(I) the aggregate of such shareholder's pro rata shares of the specified E&P deficits of the E&P deficit foreign corporations of such shareholder, or

(II) the amount determined under paragraph (2)(B).

(ii) Allocation of deficit

If the amount described in clause (i)(II) is less than the amount described in clause (i)(I), then the shareholder shall designate, in such form and manner as the Secretary determines—

(I) the amount of the specified E&P deficit which is to be taken into account for each E&P deficit corporation with respect to the taxpayer, and

(II) in the case of an E&P deficit corporation which has a qualified deficit (as defined in section 952), the portion (if any) of the deficit taken into account under subclause (I) which is attributable to a qualified deficit, including the qualified activities to which such portion is attributable.

(B) E&P deficit foreign corporation

The term “E&P deficit foreign corporation” means, with respect to any taxpayer, any specified foreign corporation with respect to which such taxpayer is a United States shareholder, if, as of November 2, 2017—

- (i) such specified foreign corporation has a deficit in post-1986 earnings and profits,
- (ii) such corporation was a specified foreign corporation, and
- (iii) such taxpayer was a United States shareholder of such corporation.

(C) Specified E&P deficit

The term “specified E&P deficit” means, with respect to any E&P deficit foreign corporation, the amount of the deficit referred to in subparagraph (B).

(4) Treatment of earnings and profits in future years

(A) Reduced earnings and profits treated as previously taxed income when distributed

For purposes of applying section 959 in any taxable year beginning with the taxable year described in subsection (a), with respect to any United States shareholder of a deferred foreign income corporation, an amount equal to such shareholder’s reduction under paragraph (1) which is allocated to such deferred foreign income corporation under this subsection shall be treated as an amount which was included in the gross income of such United States shareholder under section 951(a).

(B) E&P deficits

For purposes of this title, with respect to any taxable year beginning with the taxable year described in subsection (a), a United States shareholder’s pro rata share of the earnings and profits of any E&P deficit foreign corporation under this subsection shall be increased by the amount of the specified E&P deficit of such corporation taken into account by such shareholder under paragraph (1), and, for purposes of section 952, such increase shall be attributable to the same activity to which the deficit so taken into account was attributable.

(5) Netting among United States shareholders in same affiliated group

(A) In general

In the case of any affiliated group which includes at least one E&P net surplus shareholder and one E&P net deficit shareholder, the amount which would (but for this paragraph) be taken into account under section 951(a)(1) by reason of subsection (a) by each such E&P net surplus shareholder shall be

reduced (but not below zero) by such shareholder’s applicable share of the affiliated group’s aggregate unused E&P deficit.

(B) E&P net surplus shareholder

For purposes of this paragraph, the term “E&P net surplus shareholder” means any United States shareholder which would (determined without regard to this paragraph) take into account an amount greater than zero under section 951(a)(1) by reason of subsection (a).

(C) E&P net deficit shareholder

For purposes of this paragraph, the term “E&P net deficit shareholder” means any United States shareholder if—

- (i) the aggregate foreign E&P deficit with respect to such shareholder (as defined in paragraph (3)(A) without regard to clause (i)(II) thereof), exceeds
- (ii) the amount which would (but for this subsection) be taken into account by such shareholder under section 951(a)(1) by reason of subsection (a).

(D) Aggregate unused E&P deficit

For purposes of this paragraph—

(i) In general

The term “aggregate unused E&P deficit” means, with respect to any affiliated group, the lesser of—

- (I) the sum of the excesses described in subparagraph (C), determined with respect to each E&P net deficit shareholder in such group, or
- (II) the amount determined under subparagraph (E)(ii).

(ii) Reduction with respect to E&P net deficit shareholders which are not wholly owned by the affiliated group

If the group ownership percentage of any E&P net deficit shareholder is less than 100 percent, the amount of the excess described in subparagraph (C) which is taken into account under clause (i)(I) with respect to such E&P net deficit shareholder shall be such group ownership percentage of such amount.

(E) Applicable share

For purposes of this paragraph, the term “applicable share” means, with respect to any E&P net surplus shareholder in any affiliated group, the amount which bears the same proportion to such group’s aggregate unused E&P deficit as—

- (i) the product of—
 - (I) such shareholder’s group ownership percentage, multiplied by
 - (II) the amount which would (but for this paragraph) be taken into account under section 951(a)(1) by reason of subsection (a) by such shareholder, bears to
- (ii) the aggregate amount determined under clause (i) with respect to all E&P net surplus shareholders in such group.

(F) Group ownership percentage

For purposes of this paragraph, the term “group ownership percentage” means, with

respect to any United States shareholder in any affiliated group, the percentage of the value of the stock of such United States shareholder which is held by other includible corporations in such affiliated group. Notwithstanding the preceding sentence, the group ownership percentage of the common parent of the affiliated group is 100 percent. Any term used in this subparagraph which is also used in section 1504 shall have the same meaning as when used in such section.

(c) Application of participation exemption to included income

(1) In general

In the case of a United States shareholder of a deferred foreign income corporation, there shall be allowed as a deduction for the taxable year in which an amount is included in the gross income of such United States shareholder under section 951(a)(1) by reason of this section an amount equal to the sum of—

(A) the United States shareholder's 8 percent rate equivalent percentage of the excess (if any) of—

(i) the amount so included as gross income, over

(ii) the amount of such United States shareholder's aggregate foreign cash position, plus

(B) the United States shareholder's 15.5 percent rate equivalent percentage of so much of the amount described in subparagraph (A)(ii) as does not exceed the amount described in subparagraph (A)(i).

(2) 8 and 15.5 percent rate equivalent percentages

For purposes of this subsection—

(A) 8 percent rate equivalent percentage

The term "8 percent rate equivalent percentage" means, with respect to any United States shareholder for any taxable year, the percentage which would result in the amount to which such percentage applies being subject to a 8 percent rate of tax determined by only taking into account a deduction equal to such percentage of such amount and the highest rate of tax specified in section 11 for such taxable year. In the case of any taxable year of a United States shareholder to which section 15 applies, the highest rate of tax under section 11 before the effective date of the change in rates and the highest rate of tax under section 11 after the effective date of such change shall each be taken into account under the preceding sentence in the same proportions as the portion of such taxable year which is before and after such effective date, respectively.

(B) 15.5 percent rate equivalent percentage

The term "15.5 percent rate equivalent percentage" means, with respect to any United States shareholder for any taxable year, the percentage determined under subparagraph (A) applied by substituting "15.5 percent rate of tax" for "8 percent rate of tax".

(3) Aggregate foreign cash position

For purposes of this subsection—

(A) In general

The term "aggregate foreign cash position" means, with respect to any United States shareholder, the greater of—

(i) the aggregate of such United States shareholder's pro rata share of the cash position of each specified foreign corporation of such United States shareholder determined as of the close of the last taxable year of such specified foreign corporation which begins before January 1, 2018, or

(ii) one half of the sum of—

(I) the aggregate described in clause (i) determined as of the close of the last taxable year of each such specified foreign corporation which ends before November 2, 2017, plus

(II) the aggregate described in clause (i) determined as of the close of the taxable year of each such specified foreign corporation which precedes the taxable year referred to in subclause (I).

(B) Cash position

For purposes of this paragraph, the cash position of any specified foreign corporation is the sum of—

(i) cash held by such foreign corporation,

(ii) the net accounts receivable of such foreign corporation, plus

(iii) the fair market value of the following assets held by such corporation:

(I) Personal property which is of a type that is actively traded and for which there is an established financial market.

(II) Commercial paper, certificates of deposit, the securities of the Federal government and of any State or foreign government.

(III) Any foreign currency.

(IV) Any obligation with a term of less than one year.

(V) Any asset which the Secretary identifies as being economically equivalent to any asset described in this subparagraph.

(C) Net accounts receivable

For purposes of this paragraph, the term "net accounts receivable" means, with respect to any specified foreign corporation, the excess (if any) of—

(i) such corporation's accounts receivable, over

(ii) such corporation's accounts payable (determined consistent with the rules of section 461).

(D) Prevention of double counting

Cash positions of a specified foreign corporation described in clause (ii), (iii)(I), or (iii)(IV) of subparagraph (B) shall not be taken into account by a United States shareholder under subparagraph (A) to the extent that such United States shareholder demonstrates to the satisfaction of the Secretary that such amount is so taken into account by such United States shareholder with respect to another specified foreign corporation.

(E) Cash positions of certain non-corporate entities taken into account

An entity (other than a corporation) shall be treated as a specified foreign corporation

of a United States shareholder for purposes of determining such United States shareholder's aggregate foreign cash position if any interest in such entity is held by a specified foreign corporation of such United States shareholder (determined after application of this subparagraph) and such entity would be a specified foreign corporation of such United States shareholder if such entity were a foreign corporation.

(F) Anti-abuse

If the Secretary determines that a principal purpose of any transaction was to reduce the aggregate foreign cash position taken into account under this subsection, such transaction shall be disregarded for purposes of this subsection.

(d) Deferred foreign income corporation; accumulated post-1986 deferred foreign income

For purposes of this section—

(1) Deferred foreign income corporation

The term “deferred foreign income corporation” means, with respect to any United States shareholder, any specified foreign corporation of such United States shareholder which has accumulated post-1986 deferred foreign income (as of the date referred to in paragraph (1) or (2) of subsection (a)) greater than zero.

(2) Accumulated post-1986 deferred foreign income

The term “accumulated post-1986 deferred foreign income” means the post-1986 earnings and profits except to the extent such earnings—

(A) are attributable to income of the specified foreign corporation which is effectively connected with the conduct of a trade or business within the United States and subject to tax under this chapter, or

(B) in the case of a controlled foreign corporation, if distributed, would be excluded from the gross income of a United States shareholder under section 959.

To the extent provided in regulations or other guidance prescribed by the Secretary, in the case of any controlled foreign corporation which has shareholders which are not United States shareholders, accumulated post-1986 deferred foreign income shall be appropriately reduced by amounts which would be described in subparagraph (B) if such shareholders were United States shareholders.

(3) Post-1986 earnings and profits

The term “post-1986 earnings and profits” means the earnings and profits of the foreign corporation (computed in accordance with sections 964(a) and 986, and by only taking into account periods when the foreign corporation was a specified foreign corporation) accumulated in taxable years beginning after December 31, 1986, and determined—

(A) as of the date referred to in paragraph (1) or (2) of subsection (a), whichever is applicable with respect to such foreign corporation, and

(B) without diminution by reason of dividends distributed during the taxable year de-

scribed in subsection (a) other than dividends distributed to another specified foreign corporation.

(e) Specified foreign corporation

(1) In general

For purposes of this section, the term “specified foreign corporation” means—

(A) any controlled foreign corporation, and

(B) any foreign corporation with respect to which one or more domestic corporations is a United States shareholder.

(2) Application to certain foreign corporations

For purposes of sections 951 and 961, a foreign corporation described in paragraph (1)(B) shall be treated as a controlled foreign corporation solely for purposes of taking into account the subpart F income of such corporation under subsection (a) (and for purposes of applying subsection (f)).

(3) Exclusion of passive foreign investment companies

Such term shall not include any corporation which is a passive foreign investment company (as defined in section 1297) with respect to the shareholder and which is not a controlled foreign corporation.

(f) Determinations of pro rata share

(1) In general

For purposes of this section, the determination of any United States shareholder's pro rata share of any amount with respect to any specified foreign corporation shall be determined under rules similar to the rules of section 951(a)(2) by treating such amount in the same manner as subpart F income (and by treating such specified foreign corporation as a controlled foreign corporation).

(2) Special rules

The portion which is included in the income of a United States shareholder under section 951(a)(1) by reason of subsection (a) which is equal to the deduction allowed under subsection (c) by reason of such inclusion—

(A) shall be treated as income exempt from tax for purposes of sections 705(a)(1)(B) and 1367(a)(1)(A), and

(B) shall not be treated as income exempt from tax for purposes of determining whether an adjustment shall be made to an accumulated adjustment account under section 1368(e)(1)(A).

(g) Disallowance of foreign tax credit, etc.

(1) In general

No credit shall be allowed under section 901 for the applicable percentage of any taxes paid or accrued (or treated as paid or accrued) with respect to any amount for which a deduction is allowed under this section.

(2) Applicable percentage

For purposes of this subsection, the term “applicable percentage” means the amount (expressed as a percentage) equal to the sum of—

(A) 0.771 multiplied by the ratio of—

(i) the excess to which subsection (c)(1)(A) applies, divided by

(ii) the sum of such excess plus the amount to which subsection (c)(1)(B) applies, plus

(B) 0.557 multiplied by the ratio of—

(i) the amount to which subsection (c)(1)(B) applies, divided by

(ii) the sum described in subparagraph (A)(ii).

(3) Denial of deduction

No deduction shall be allowed under this chapter for any tax for which credit is not allowable under section 901 by reason of paragraph (1) (determined by treating the taxpayer as having elected the benefits of subpart A of part III of subchapter N).

(4) Coordination with section 78

With respect to the taxes treated as paid or accrued by a domestic corporation with respect to amounts which are includible in gross income of such domestic corporation by reason of this section, section 78 shall apply only to so much of such taxes as bears the same proportion to the amount of such taxes as—

(A) the excess of—

(i) the amounts which are includible in gross income of such domestic corporation by reason of this section, over

(ii) the deduction allowable under subsection (c) with respect to such amounts, bears to

(B) such amounts.

(h) Election to pay liability in installments

(1) In general

In the case of a United States shareholder of a deferred foreign income corporation, such United States shareholder may elect to pay the net tax liability under this section in 8 installments of the following amounts:

(A) 8 percent of the net tax liability in the case of each of the first 5 of such installments,

(B) 15 percent of the net tax liability in the case of the 6th such installment,

(C) 20 percent of the net tax liability in the case of the 7th such installment, and

(D) 25 percent of the net tax liability in the case of the 8th such installment.

(2) Date for payment of installments

If an election is made under paragraph (1), the first installment shall be paid on the due date (determined without regard to any extension of time for filing the return) for the return of tax for the taxable year described in subsection (a) and each succeeding installment shall be paid on the due date (as so determined) for the return of tax for the taxable year following the taxable year with respect to which the preceding installment was made.

(3) Acceleration of payment

If there is an addition to tax for failure to timely pay any installment required under this subsection, a liquidation or sale of substantially all the assets of the taxpayer (including in a title 11 or similar case), a cessation of business by the taxpayer, or any similar circumstance, then the unpaid portion

of all remaining installments shall be due on the date of such event (or in the case of a title 11 or similar case, the day before the petition is filed). The preceding sentence shall not apply to the sale of substantially all the assets of a taxpayer to a buyer if such buyer enters into an agreement with the Secretary under which such buyer is liable for the remaining installments due under this subsection in the same manner as if such buyer were the taxpayer.

(4) Proration of deficiency to installments

If an election is made under paragraph (1) to pay the net tax liability under this section in installments and a deficiency has been assessed with respect to such net tax liability, the deficiency shall be prorated to the installments payable under paragraph (1). The part of the deficiency so prorated to any installment the date for payment of which has not arrived shall be collected at the same time as, and as a part of, such installment. The part of the deficiency so prorated to any installment the date for payment of which has arrived shall be paid upon notice and demand from the Secretary. This subsection shall not apply if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(5) Election

Any election under paragraph (1) shall be made not later than the due date for the return of tax for the taxable year described in subsection (a) and shall be made in such manner as the Secretary shall provide.

(6) Net tax liability under this section

For purposes of this subsection—

(A) In general

The net tax liability under this section with respect to any United States shareholder is the excess (if any) of—

(i) such taxpayer's net income tax for the taxable year in which an amount is included in the gross income of such United States shareholder under section 951(a)(1) by reason of this section, over

(ii) such taxpayer's net income tax for such taxable year determined—

(I) without regard to this section, and

(II) without regard to any income or deduction properly attributable to a dividend received by such United States shareholder from any deferred foreign income corporation.

(B) Net income tax

The term "net income tax" means the regular tax liability reduced by the credits allowed under subparts A, B, and D of part IV of subchapter A.

(i) Special rules for S corporation shareholders

(1) In general

In the case of any S corporation which is a United States shareholder of a deferred foreign income corporation, each shareholder of such S corporation may elect to defer payment of such shareholder's net tax liability under this section with respect to such S corporation

until the shareholder's taxable year which includes the triggering event with respect to such liability. Any net tax liability payment of which is deferred under the preceding sentence shall be assessed on the return of tax as an addition to tax in the shareholder's taxable year which includes such triggering event.

(2) Triggering event

(A) In general

In the case of any shareholder's net tax liability under this section with respect to any S corporation, the triggering event with respect to such liability is whichever of the following occurs first:

(i) Such corporation ceases to be an S corporation (determined as of the first day of the first taxable year that such corporation is not an S corporation).

(ii) A liquidation or sale of substantially all the assets of such S corporation (including in a title 11 or similar case), a cessation of business by such S corporation, such S corporation ceases to exist, or any similar circumstance.

(iii) A transfer of any share of stock in such S corporation by the taxpayer (including by reason of death, or otherwise).

(B) Partial transfers of stock

In the case of a transfer of less than all of the taxpayer's shares of stock in the S corporation, such transfer shall only be a triggering event with respect to so much of the taxpayer's net tax liability under this section with respect to such S corporation as is properly allocable to such stock.

(C) Transfer of liability

A transfer described in clause (iii) of subparagraph (A) shall not be treated as a triggering event if the transferee enters into an agreement with the Secretary under which such transferee is liable for net tax liability with respect to such stock in the same manner as if such transferee were the taxpayer.

(3) Net tax liability

A shareholder's net tax liability under this section with respect to any S corporation is the net tax liability under this section which would be determined under subsection (h)(6) if the only subpart F income taken into account by such shareholder by reason of this section were allocations from such S corporation.

(4) Election to pay deferred liability in installments

In the case of a taxpayer which elects to defer payment under paragraph (1)—

(A) subsection (h) shall be applied separately with respect to the liability to which such election applies,

(B) an election under subsection (h) with respect to such liability shall be treated as timely made if made not later than the due date for the return of tax for the taxable year in which the triggering event with respect to such liability occurs,

(C) the first installment under subsection (h) with respect to such liability shall be paid not later than such due date (but deter-

mined without regard to any extension of time for filing the return), and

(D) if the triggering event with respect to any net tax liability is described in paragraph (2)(A)(ii), an election under subsection (h) with respect to such liability may be made only with the consent of the Secretary.

(5) Joint and several liability of S corporation

If any shareholder of an S corporation elects to defer payment under paragraph (1), such S corporation shall be jointly and severally liable for such payment and any penalty, addition to tax, or additional amount attributable thereto.

(6) Extension of limitation on collection

Any limitation on the time period for the collection of a liability deferred under this subsection shall not be treated as beginning before the date of the triggering event with respect to such liability.

(7) Annual reporting of net tax liability

(A) In general

Any shareholder of an S corporation which makes an election under paragraph (1) shall report the amount of such shareholder's deferred net tax liability on such shareholder's return of tax for the taxable year for which such election is made and on the return of tax for each taxable year thereafter until such amount has been fully assessed on such returns.

(B) Deferred net tax liability

For purposes of this paragraph, the term "deferred net tax liability" means, with respect to any taxable year, the amount of net tax liability payment of which has been deferred under paragraph (1) and which has not been assessed on a return of tax for any prior taxable year.

(C) Failure to report

In the case of any failure to report any amount required to be reported under subparagraph (A) with respect to any taxable year before the due date for the return of tax for such taxable year, there shall be assessed on such return as an addition to tax 5 percent of such amount.

(8) Election

Any election under paragraph (1)—

(A) shall be made by the shareholder of the S corporation not later than the due date for such shareholder's return of tax for the taxable year which includes the close of the taxable year of such S corporation in which the amount described in subsection (a) is taken into account, and

(B) shall be made in such manner as the Secretary shall provide.

(j) Reporting by S corporation

Each S corporation which is a United States shareholder of a specified foreign corporation shall report in its return of tax under section 6037(a) the amount includible in its gross income for such taxable year by reason of this section and the amount of the deduction allowable by

subsection (c). Any copy provided to a shareholder under section 6037(b) shall include a statement of such shareholder's pro rata share of such amounts.

(k) Extension of limitation on assessment

Notwithstanding section 6501, the limitation on the time period for the assessment of the net tax liability under this section (as defined in subsection (h)(6)) shall not expire before the date that is 6 years after the return for the taxable year described in such subsection was filed.

(l) Recapture for expatriated entities

(1) In general

If a deduction is allowed under subsection (c) to a United States shareholder and such shareholder first becomes an expatriated entity at any time during the 10-year period beginning on the date of the enactment of the Tax Cuts and Jobs Act¹ (with respect to a surrogate foreign corporation which first becomes a surrogate foreign corporation during such period), then—

(A) the tax imposed by this chapter shall be increased for the first taxable year in which such taxpayer becomes an expatriated entity by an amount equal to 35 percent of the amount of the deduction allowed under subsection (c), and

(B) no credits shall be allowed against the increase in tax under subparagraph (A).

(2) Expatriated entity

For purposes of this subsection, the term "expatriated entity" has the same meaning given such term under section 7874(a)(2), except that such term shall not include an entity if the surrogate foreign corporation with respect to the entity is treated as a domestic corporation under section 7874(b).

(3) Surrogate foreign corporation

For purposes of this subsection, the term "surrogate foreign corporation" has the meaning given such term in section 7874(a)(2)(B).

(m) Special rules for United States shareholders which are real estate investment trusts

(1) In general

If a real estate investment trust is a United States shareholder in 1 or more deferred foreign income corporations—

(A) any amount required to be taken into account under section 951(a)(1) by reason of this section shall not be taken into account as gross income of the real estate investment trust for purposes of applying paragraphs (2) and (3) of section 856(c) to any taxable year for which such amount is taken into account under section 951(a)(1), and

(B) if the real estate investment trust elects the application of this subparagraph, notwithstanding subsection (a), any amount required to be taken into account under section 951(a)(1) by reason of this section shall, in lieu of the taxable year in which it would otherwise be included in gross income (for purposes of the computation of real estate investment trust taxable income under sec-

tion 857(b)), be included in gross income as follows:

(i) 8 percent of such amount in the case of each of the taxable years in the 5-taxable year period beginning with the taxable year in which such amount would otherwise be included.

(ii) 15 percent of such amount in the case of the 1st taxable year following such period.

(iii) 20 percent of such amount in the case of the 2nd taxable year following such period.

(iv) 25 percent of such amount in the case of the 3rd taxable year following such period.

(2) Rules for trusts electing deferred inclusion

(A) Election

Any election under paragraph (1)(B) shall be made not later than the due date for the first taxable year in the 5-taxable year period described in clause (i) of paragraph (1)(B) and shall be made in such manner as the Secretary shall provide.

(B) Special rules

If an election under paragraph (1)(B) is in effect with respect to any real estate investment trust, the following rules shall apply:

(i) Application of participation exemption

For purposes of subsection (c)(1)—

(I) the aggregate amount to which subparagraph (A) or (B) of subsection (c)(1) applies shall be determined without regard to the election,

(II) each such aggregate amount shall be allocated to each taxable year described in paragraph (1)(B) in the same proportion as the amount included in the gross income of such United States shareholder under section 951(a)(1) by reason of this section is allocated to each such taxable year.

(III) NO INSTALLMENT PAYMENTS.—The real estate investment trust may not make an election under subsection (g) for any taxable year described in paragraph (1)(B).

(ii) Acceleration of inclusion

If there is a liquidation or sale of substantially all the assets of the real estate investment trust (including in a title 11 or similar case), a cessation of business by such trust, or any similar circumstance, then any amount not yet included in gross income under paragraph (1)(B) shall be included in gross income as of the day before the date of the event and the unpaid portion of any tax liability with respect to such inclusion shall be due on the date of such event (or in the case of a title 11 or similar case, the day before the petition is filed).

(n) Election not to apply net operating loss deduction

(1) In general

If a United States shareholder of a deferred foreign income corporation elects the applica-

¹ See References in Text note below.

tion of this subsection for the taxable year described in subsection (a), then the amount described in paragraph (2) shall not be taken into account—

(A) in determining the amount of the net operating loss deduction under section 172 of such shareholder for such taxable year, or

(B) in determining the amount of taxable income for such taxable year which may be reduced by net operating loss carryovers or carrybacks to such taxable year under section 172.

(2) Amount described

The amount described in this paragraph is the sum of—

(A) the amount required to be taken into account under section 951(a)(1) by reason of this section (determined after the application of subsection (c)), plus

(B) in the case of a domestic corporation which chooses to have the benefits of subpart A of part III of subchapter N for the taxable year, the taxes deemed to be paid by such corporation under subsections (a) and (b) of section 960 for such taxable year with respect to the amount described in subparagraph (A) which are treated as a dividends² under section 78.

(3) Election

Any election under this subsection shall be made not later than the due date (including extensions) for filing the return of tax for the taxable year and shall be made in such manner as the Secretary shall prescribe.

(o) Regulations

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

(1) regulations or other guidance to provide appropriate basis adjustments, and

(2) regulations or other guidance to prevent the avoidance of the purposes of this section, including through a reduction in earnings and profits, through changes in entity classification or accounting methods, or otherwise.

(Added Pub. L. 108-357, title IV, § 422(a), Oct. 22, 2004, 118 Stat. 1514; amended Pub. L. 109-135, title IV, § 403(q), Dec. 21, 2005, 119 Stat. 2627; Pub. L. 115-97, title I, § 14103(a), Dec. 22, 2017, 131 Stat. 2195.)

REFERENCES IN TEXT

The date of the enactment of the Tax Cuts and Jobs Act, referred to in subsec. (l)(1), probably means the date of the enactment of title I of Pub. L. 115-97, which was approved Dec. 22, 2017. Prior versions of the bill that was enacted into law as Pub. L. 115-97 included such Short Title, but it was not enacted as part of title I of Pub. L. 115-97.

AMENDMENTS

2017—Pub. L. 115-97 amended section generally. Prior to amendment, section related to temporary dividends received deduction.

2005—Subsec. (a)(2)(B). Pub. L. 109-135, § 403(q)(1), inserted “from another controlled foreign corporation in such chain of ownership” before “, but only to the extent”.

² So in original.

Subsec. (b)(2)(A). Pub. L. 109-135, § 403(q)(2), inserted “cash” before “dividends”.

Subsec. (b)(3). Pub. L. 109-135, § 403(q)(3), inserted at end “The Secretary may prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the purposes of this paragraph, including regulations which provide that cash dividends shall not be taken into account under subsection (a) to the extent such dividends are attributable to the direct or indirect transfer (including through the use of intervening entities or capital contributions) of cash or other property from a related person (as so defined) to a controlled foreign corporation.”

Subsec. (c)(1). Pub. L. 109-135, § 403(q)(4), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The term ‘applicable financial statement’ means, with respect to a United States shareholder, the most recently audited financial statement (including notes and other documents which accompany such statement) which includes such shareholder—

“(A) which is certified on or before June 30, 2003, as being prepared in accordance with generally accepted accounting principles, and

“(B) which is used for the purposes of a statement or report—

“(i) to creditors,

“(ii) to shareholders, or

“(iii) for any other substantial nontax purpose.

In the case of a corporation required to file a financial statement with the Securities and Exchange Commission, such term means the most recent such statement filed on or before June 30, 2003.”

Subsec. (d)(2). Pub. L. 109-135, § 403(q)(5), substituted “directly allocable” for “properly allocated and apportioned”.

Subsec. (d)(4). Pub. L. 109-135, § 403(q)(6), added par. (4).

Subsec. (e)(1). Pub. L. 109-135, § 403(q)(7), inserted “which are imposed by foreign countries and possessions of the United States and are” after “taxes” in concluding provisions.

Subsec. (f). Pub. L. 109-135, § 403(q)(8), inserted “on or” before “before the due date” in concluding provisions.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109-135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which they relate, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending on or after Oct. 22, 2004, see section 422(d) of Pub. L. 108-357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

SUBPART G—EXPORT TRADE CORPORATIONS

Sec.

970. Reduction of subpart F income of export trade corporations.

971. Definitions.

[972. Repealed.]

AMENDMENTS

1976—Pub. L. 94-455, title XIX, § 1901(b)(27)(B), Oct. 4, 1976, 90 Stat. 1799, struck out item 972 “Consolidation of group of export trade corporations”.

1962—Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1027, added heading of subpart G, and items 970 to 972.

§ 970. Reduction of subpart F income of export trade corporations

(a) Export trade income constituting foreign base company income

(1) In general

In the case of a controlled foreign corporation (as defined in section 957) which for the