

amount which would be net operating loss of the trust for the calendar year if the amount of such loss were determined in the same manner as ordinary income is determined under paragraph (1).

(3) Treatment of deficiency distributions

In the case of any deficiency dividend (as defined in section 860(f))—

(A) such dividend shall be taken into account when paid without regard to section 860, and

(B) any income giving rise to the adjustment shall be treated as arising when the dividend is paid.

(Added Pub. L. 94-455, title XVI, §1605(a), Oct. 4, 1976, 90 Stat. 1754; amended Pub. L. 99-514, title VI, §668(a), Oct. 22, 1986, 100 Stat. 2306; Pub. L. 100-647, title I, §1006(s)(1), (3), Nov. 10, 1988, 102 Stat. 3418.)

Editorial Notes

REFERENCES IN TEXT

Subsection (b)(3)(A) of section 857, referred to in subsec. (c)(1)(B), was repealed and subsection (b)(3)(B) was redesignated (b)(3)(A) by Pub. L. 115-97, title I, §13001(b)(2)(K)(i), Dec. 22, 2017, 131 Stat. 2096.

AMENDMENTS

1988—Subsec. (c)(1)(A). Pub. L. 100-647, §1006(s)(3), inserted “(but computed without regard to that portion of such deduction which is attributable to the amount excluded under section 857(b)(2)(D))” after “such calendar year”.

Subsec. (e)(2). Pub. L. 100-647, §1006(s)(1), amended par. (2) generally, designating existing provisions as subpar. (A) and adding subpars. (B) and (C).

1986—Pub. L. 99-514 substituted “Excise tax on undistributed income of real estate investment trusts” for “Excise tax based on certain real estate investment trust taxable income not distributed during the taxable year” as section catchline and amended text generally. Prior to amendment text read as follows: “Effective with respect to taxable years beginning after December 31, 1979, there is hereby imposed on each real estate investment trust for the taxable year a tax equal to 3 percent of the amount (if any) by which 75 percent of the real estate investment trust taxable income (as defined in section 857(b)(2), but determined without regard to section 857(b)(2)(B), and by excluding any net capital gain for the taxable year) exceeds the amount of the dividends paid deduction (as defined in section 561, but computed without regard to capital gains dividends as defined in section 857(b)(3)(C) and without regard to any dividend paid after the close of the taxable year) for the taxable year. For purposes of the preceding sentence, the determination of the real estate investment trust taxable income shall be made by taking into account only the amount and character of the items of income and deduction as reported by such trust in its return for the taxable year.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to calendar years beginning after Dec. 31, 1986, see section 669(b) of Pub. L. 99-514, set out as a note under section 856 of this title.

§ 4982. Excise tax on undistributed income of regulated investment companies

(a) Imposition of tax

There is hereby imposed a tax on every regulated investment company for each calendar year equal to 4 percent of the excess (if any) of—

- (1) the required distribution for such calendar year, over
- (2) the distributed amount for such calendar year.

(b) Required distribution

For purposes of this section—

(1) In general

The term “required distribution” means, with respect to any calendar year, the sum of—

- (A) 98 percent of the regulated investment company’s ordinary income for such calendar year, plus
- (B) 98.2 percent of the regulated investment company’s capital gain net income for the 1-year period ending on October 31 of such calendar year.

(2) Increase by prior year shortfall

The amount determined under paragraph (1) for any calendar year shall be increased by the excess (if any) of—

- (A) the grossed up required distribution for the preceding calendar year, over
- (B) the distributed amount for such preceding calendar year.

(3) Grossed up required distribution

The grossed up required distribution for any calendar year is the required distribution for such year determined—

- (A) with the application of paragraph (2) to such taxable year, and
- (B) by substituting “100 percent” for each percentage set forth in paragraph (1).

(c) Distributed amount

For purposes of this section—

(1) In general

The term “distributed amount” means, with respect to any calendar year, the sum of—

- (A) the deduction for dividends paid (as defined in section 561) during such calendar year, and
- (B) any amount on which tax is imposed under subsection (b)(1) or (b)(3)(A) of section 852 for any taxable year ending in such calendar year.

(2) Increase by prior year overdistribution

The amount determined under paragraph (1) for any calendar year shall be increased by the excess (if any) of—

- (A) the distributed amount for the preceding calendar year (determined with the application of this paragraph to such preceding calendar year), over
- (B) the grossed up required distribution for such preceding calendar year.

(3) Determination of dividends paid

The amount of the dividends paid during any calendar year shall be determined without regard to—

- (A) the provisions of section 855, and
- (B) any exempt-interest dividend as defined in section 852(b)(5).

(4) Special rule for estimated tax payments

(A) In general

In the case of a regulated investment company which elects the application of this paragraph for any calendar year—

(i) the distributed amount with respect to such company for such calendar year shall be increased by the amount on which qualified estimated tax payments are made by such company during such calendar year, and

(ii) the distributed amount with respect to such company for the following calendar year shall be reduced by the amount of such increase.

(B) Qualified estimated tax payments

For purposes of this paragraph, the term “qualified estimated tax payments” means, with respect to any calendar year, payments of estimated tax of a tax described in paragraph (1)(B) for any taxable year which begins (but does not end) in such calendar year.

(d) Time for payment of tax

The tax imposed by this section for any calendar year shall be paid on or before March 15 of the following calendar year.

(e) Definitions and special rules

For purposes of this section—

(1) Ordinary income

The term “ordinary income” means the investment company taxable income (as defined in section 852(b)(2)) determined—

(A) without regard to subparagraphs (A) and (D) of section 852(b)(2),

(B) by not taking into account any gain or loss from the sale or exchange of a capital asset, and

(C) by treating the calendar year as the company’s taxable year.

(2) Capital gain net income

(A) In general

Except as provided in subparagraph (B), the term “capital gain net income” has the meaning given such term by section 1222(9) (determined by treating the 1-year period ending on October 31 of any calendar year as the company’s taxable year).

(B) Reduction by net ordinary loss for calendar year

The amount determined under subparagraph (A) shall be reduced (but not below the net capital gain) by the amount of the company’s net ordinary loss for the calendar year.

(C) Definitions

For purposes of this paragraph—

(i) Net capital gain

The term “net capital gain” has the meaning given such term by section 1222(11) (determined by treating the 1-year

period ending on October 31 of the calendar year as the company’s taxable year).

(ii) Net ordinary loss

The net ordinary loss for the calendar year is the amount which would be the net operating loss of the company for the calendar year if the amount of such loss were determined in the same manner as ordinary income is determined under paragraph (1).

(3) Treatment of deficiency distributions

In the case of any deficiency dividend (as defined in section 860(f))—

(A) such dividend shall be taken into account when paid without regard to section 860, and

(B) any income giving rise to the adjustment shall be treated as arising when the dividend is paid.

(4) Election to use taxable year in certain cases

(A) In general

If—

(i) the taxable year of the regulated investment company ends with the month of November or December, and

(ii) such company makes an election under this paragraph,

subsection (b)(1)(B) and paragraph (2) of this subsection shall be applied by taking into account the company’s taxable year in lieu of the 1-year period ending on October 31 of the calendar year.

(B) Election revocable only with consent

An election under this paragraph, once made, may be revoked only with the consent of the Secretary.

(5) Treatment of specified gains and losses after October 31 of calendar year

(A) In general

Any specified gain or specified loss which (but for this paragraph) would be properly taken into account for the portion of the calendar year after October 31 shall be treated as arising on January 1 of the following calendar year.

(B) Specified gains and losses

For purposes of this paragraph—

(i) Specified gain

The term “specified gain” means ordinary gain from the sale, exchange, or other disposition of property (including the termination of a position with respect to such property). Such term shall include any foreign currency gain attributable to a section 988 transaction (within the meaning of section 988) and any amount includible in gross income under section 1296(a)(1).

(ii) Specified loss

The term “specified loss” means ordinary loss from the sale, exchange, or other disposition of property (including the termination of a position with respect to such property). Such term shall include any foreign currency loss attributable to a section 988 transaction (within the meaning

of section 988) and any amount allowable as a deduction under section 1296(a)(2).

(C) Special rule for companies electing to use the taxable year

In the case of any company making an election under paragraph (4), subparagraph (A) shall be applied by substituting the last day of the company's taxable year for October 31.

(6) Treatment of mark to market gain

(A) In general

For purposes of determining a regulated investment company's ordinary income, notwithstanding paragraph (1)(C), each specified mark to market provision shall be applied as if such company's taxable year ended on October 31. In the case of a company making an election under paragraph (4), the preceding sentence shall be applied by substituting the last day of the company's taxable year for October 31.

(B) Specified mark to market provision

For purposes of this paragraph, the term "specified mark to market provision" means sections 1256 and 1296 and any other provision of this title (or regulations thereunder) which treats property as disposed of on the last day of the taxable year or which determines income by reference to the value of an item on the last day of the taxable year.

(7) Elective deferral of certain ordinary losses

Except as provided in regulations prescribed by the Secretary, in the case of a regulated investment company which has a taxable year other than the calendar year—

(A) such company may elect to determine its ordinary income and net ordinary loss (as defined in paragraph (2)(C)(ii)) for the calendar year without regard to any portion of any net ordinary loss (determined without regard to specified gains and losses taken into account under paragraph (5)) which is attributable to the portion of such calendar year which is after the beginning of the taxable year which begins in such calendar year, and

(B) any amount of net ordinary loss not taken into account for a calendar year by reason of subparagraph (A) shall be treated as arising on the 1st day of the following calendar year.

(f) Exception for certain regulated investment companies

This section shall not apply to any regulated investment company for any calendar year if at all times during such calendar year each shareholder in such company was—

- (1) a trust described in section 401(a) and exempt from tax under section 501(a),
- (2) a segregated asset account of a life insurance company held in connection with variable contracts (as defined in section 817(d)),
- (3) any other tax-exempt entity whose ownership of beneficial interests in the company would not preclude the application of section 817(h)(4), or
- (4) another regulated investment company described in this subsection.

For purposes of the preceding sentence, any shares attributable to an investment in the regulated investment company (not exceeding \$250,000) made in connection with the organization of such company shall not be taken into account.

(Added Pub. L. 99-514, title VI, §651(a), Oct. 22, 1986, 100 Stat. 2294; amended Pub. L. 100-203, title X, §10104(b)(1), Dec. 22, 1987, 101 Stat. 1330-387; Pub. L. 100-647, title I, §1006(l)(2), (5), (6), Nov. 10, 1988, 102 Stat. 3413, 3414; Pub. L. 101-239, title VII, §7204(a)(1), Dec. 19, 1989, 103 Stat. 2334; Pub. L. 105-34, title XI, §1122(c)(1), Aug. 5, 1997, 111 Stat. 976; Pub. L. 111-325, title IV, §§401(a), 402(a), 403(a), 404(a), Dec. 22, 2010, 124 Stat. 3552-3554; Pub. L. 113-295, div. A, title II, §§205(d), 220(s), Dec. 19, 2014, 128 Stat. 4026, 4036.)

Editorial Notes

AMENDMENTS

2014—Subsec. (e)(6)(B). Pub. L. 113-295, §205(d)(1), inserted "or which determines income by reference to the value of an item on the last day of the taxable year" before period at end.

Subsec. (e)(7)(A). Pub. L. 113-295, §205(d)(2), substituted "such company may elect to determine its ordinary income and net ordinary loss (as defined in paragraph (2)(C)(ii)) for the calendar year without regard to any portion of any net ordinary loss" for "such company may elect to determine its ordinary income for the calendar year without regard to any net ordinary loss".

Subsec. (f)(2). Pub. L. 113-295, §220(s), inserted comma at end.

2010—Subsec. (b)(1)(B). Pub. L. 111-325, §404(a), substituted "98.2 percent" for "98 percent".

Subsec. (c)(4). Pub. L. 111-325, §403(a), added par. (4).

Subsec. (e)(5) to (7). Pub. L. 111-325, §402(a), added pars. (5) to (7) and struck out former pars. (5) and (6) which related to treatment of foreign currency gains and losses after October 31 of calendar year and treatment of gain recognized under section 1296, respectively.

Subsec. (f). Pub. L. 111-325, §401(a)(1), struck out "either" before dash at end of introductory provisions.

Subsec. (f)(3), (4). Pub. L. 111-325, §401(a)(2)-(4), added pars. (3) and (4).

1997—Subsec. (e)(6). Pub. L. 105-34 added par. (6).

1989—Subsec. (b)(1)(A). Pub. L. 101-239 substituted "98 percent" for "97 percent".

1988—Subsec. (e)(2). Pub. L. 100-647, §1006(l)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "The term 'capital gain net income' has the meaning given to such term by section 1222(9) (determined by treating the 1-year period ending on October 31 of any calendar year as the company's taxable year)."

Subsec. (e)(5). Pub. L. 100-647, §1006(l)(5), added par. (5).

Subsec. (f). Pub. L. 100-647, §1006(l)(6), added subsec. (f).

1987—Subsec. (b)(1)(B). Pub. L. 100-203 substituted "98 percent" for "90 percent".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section 205(d) of Pub. L. 113-295 effective as if included in the provision of the Regulated Investment Company Modernization Act of 2010, Pub. L. 111-325, to which such amendment relates, with savings provision in certain cases of an election by a regulated investment company under section 852(b)(8) of this title, see section 205(f) of Pub. L. 113-295, set out as a note under section 852 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-325, title IV, § 401(b), Dec. 22, 2010, 124 Stat. 3552, provided that: “The amendment made by this section [amending this section] shall apply to calendar years beginning after the date of the enactment of this Act [Dec. 22, 2010].”

Pub. L. 111-325, title IV, § 402(b), Dec. 22, 2010, 124 Stat. 3553, provided that: “The amendments made by this section [amending this section] shall apply to calendar years beginning after the date of the enactment of this Act [Dec. 22, 2010].”

Pub. L. 111-325, title IV, § 403(b), Dec. 22, 2010, 124 Stat. 3554, provided that: “The amendment made by this section [amending this section] shall apply to calendar years beginning after the date of the enactment of this Act [Dec. 22, 2010].”

Pub. L. 111-325, title IV, § 404(b), Dec. 22, 2010, 124 Stat. 3554, provided that: “The amendments made by this section [amending this section] shall apply to calendar years beginning after the date of the enactment of this Act [Dec. 22, 2010].”

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105-34, set out as a note under section 532 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VII, § 7204(a)(2), Dec. 19, 1989, 103 Stat. 2334, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to calendar years ending after July 10, 1989.”

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title X, § 10104(b)(2), Dec. 22, 1987, 101 Stat. 1330-387, provided that: “The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 651 of the Tax Reform Act of 1986 [section 651 of Pub. L. 99-514, see Effective Date note below].”

EFFECTIVE DATE

Pub. L. 99-514, title VI, § 651(d), Oct. 22, 1986, 100 Stat. 2297, provided that: “The amendments made by this section [enacting this section and amending sections 852 and 855 of this title] shall apply to calendar years beginning after December 31, 1986.”

CHAPTER 45—PROVISIONS RELATING TO EXPATRIATED ENTITIES

Sec.
4985. Stock compensation of insiders in expatriated corporations.

Editorial Notes

PRIOR PROVISIONS

A prior chapter 45, consisting of sections 4986 to 4998, related to windfall profit tax on domestic crude oil, prior to repeal by Pub. L. 100-418, title I, § 1941(a), (c), Aug. 23, 1988, 102 Stat. 1322, 1324, applicable to crude oil removed from the premises on or after Aug. 23, 1988.

§ 4985. Stock compensation of insiders in expatriated corporations

(a) Imposition of tax

In the case of an individual who is a disqualified individual with respect to any expatriated

corporation, there is hereby imposed on such person a tax equal to—

(1) the rate of tax specified in section 1(h)(1)(D), multiplied by

(2) the value (determined under subsection (b)) of the specified stock compensation held (directly or indirectly) by or for the benefit of such individual or a member of such individual's family (as defined in section 267) at any time during the 12-month period beginning on the date which is 6 months before the expatriation date.

(b) Value

For purposes of subsection (a)—

(1) In general

The value of specified stock compensation shall be—

(A) in the case of a stock option (or other similar right) or a stock appreciation right, the fair value of such option or right, and

(B) in any other case, the fair market value of such compensation.

(2) Date for determining value

The determination of value shall be made—

(A) in the case of specified stock compensation held on the expatriation date, on such date,

(B) in the case of such compensation which is canceled during the 6 months before the expatriation date, on the day before such cancellation, and

(C) in the case of such compensation which is granted after the expatriation date, on the date such compensation is granted.

(c) Tax to apply only if shareholder gain recognized

Subsection (a) shall apply to any disqualified individual with respect to an expatriated corporation only if gain (if any) on any stock in such corporation is recognized in whole or part by any shareholder by reason of the acquisition referred to in section 7874(a)(2)(B)(i) with respect to such corporation.

(d) Exception where gain recognized on compensation

Subsection (a) shall not apply to—

(1) any stock option which is exercised on the expatriation date or during the 6-month period before such date and to the stock acquired in such exercise, if income is recognized under section 83 on or before the expatriation date with respect to the stock acquired pursuant to such exercise, and

(2) any other specified stock compensation which is exercised, sold, exchanged, distributed, cashed-out, or otherwise paid during such period in a transaction in which income, gain, or loss is recognized in full.

(e) Definitions

For purposes of this section—

(1) Disqualified individual

The term “disqualified individual” means, with respect to a corporation, any individual who, at any time during the 12-month period beginning on the date which is 6 months before the expatriation date—