

Editorial Notes**PRIOR PROVISIONS**

A prior section 58, added Pub. L. 91-172, title III, §301(a), Dec. 30, 1969, 83 Stat. 583; amended Pub. L. 92-178, title III, §308(a), Dec. 10, 1971, 85 Stat. 524; Pub. L. 94-455, title III, §301(d), title XIX, §§1901(b)(40), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1553, 1803, 1834; Pub. L. 95-600, title IV, §§421(c), 423(a), title VII, §701(b)(2), Nov. 6, 1978, 92 Stat. 2875, 2877, 2898; Pub. L. 96-222, title I, §107(a)(1)(C), Apr. 1, 1980, 94 Stat. 222; Pub. L. 97-248, title II, §201(c)(1), §201(d)(3), formerly §201(c)(3), Sept. 3, 1982, 96 Stat. 417, 419, renumbered §201(d)(3), Pub. L. 97-448, title III, §306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 97-354, §§3(c), 5(a)(16), Oct. 19, 1982, 96 Stat. 1688, 1693; Pub. L. 97-448, title I, §102(b)(2), Jan. 12, 1983, 96 Stat. 2369; Pub. L. 98-369, div. A, title VII, §711(a)(2), (3)(B), July 18, 1984, 98 Stat. 942; Pub. L. 99-514, title XVIII, §1875(a), Oct. 22, 1986, 100 Stat. 2894, related to rules for application of minimum tax for tax preferences, prior to the general revision of this part by Pub. L. 99-514, §701(a).

AMENDMENTS

2018—Subsec. (a)(2)(A). Pub. L. 115-141 substituted “461(k)” for “461(j)”.

2017—Subsec. (a)(3), (4). Pub. L. 115-97 redesignated par. (4) as (3) and struck out former par. (3). Prior to amendment, text of par. (3) read as follows: “For purposes of paragraph (1), a personal service corporation (within the meaning of section 469(j)(2)) shall be treated as a taxpayer other than a corporation.”

2014—Subsec. (a)(2)(A). Pub. L. 113-295, §221(a)(58)(E), substituted “section 461(j)” for “section 464(c)”.

Subsec. (b). Pub. L. 113-295, §221(a)(60)(B), inserted “and” at end of par. (1), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “the provisions of section 469(m) (relating to phase-in of disallowance) shall not apply, and”.

1988—Subsec. (a)(2). Pub. L. 100-647, §1007(d)(1), struck out “(as modified by section 461(i)(4)(A))” after “section 464(c)” in subpar. (A) and substituted “section 469(c)” for “section 469(d), without regard to paragraph (1)(B) thereof” in subpar. (B).

Subsec. (a)(3). Pub. L. 100-647, §1007(d)(2), substituted “469(j)(2)” for “469(g)(1)(C)”.

Subsec. (a)(4). Pub. L. 100-647, §1007(d)(3), added par. (4).

Subsec. (b). Pub. L. 100-647, §1007(d)(4), added pars. (1) to (3) and struck out former pars. (1) to (3) which read as follows:

- “(1) the adjustments of section 56 shall apply,
- “(2) any deduction to the extent such deduction is an item of tax preference under section 57(a) shall not be taken into account, and
- “(3) the provisions of section 469(m) (relating to phase-in of disallowance) shall not apply.”

1987—Subsec. (b)(3). Pub. L. 100-203 substituted “section 469(m)” for “section 469(l)”.

Statutory Notes and Related Subsidiaries**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 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1987 AMENDMENT

Section 10212(c) of Pub. L. 100-203 provided that: “The amendments made by this section [amending this section and sections 163 and 469 of this title] shall take effect as if included in the amendments made by section 501 of the Tax Reform Act of 1986 [section 501 of Pub. L. 99-514, see section 501(c) of Pub. L. 99-514, set out as an Effective Date note under section 469 of this title].”

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99-514, set out as a note under section 55 of this title.

APPLICABILITY OF 1986 REPEAL

Pub. L. 101-239, title VII, §7811(d)(1)(B), Dec. 19, 1989, 103 Stat. 2408, provided that: “The repeal of section 58(h) of the Internal Revenue Code of 1954 by the Tax Reform Act of 1986 [Pub. L. 99-514] shall be effective only with respect to items of tax preference arising in taxable years beginning after December 31, 1986.”

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

For applicability of amendment by section 701(a) of Pub. L. 99-514 [enacting this section] 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.

§ 59. Other definitions and special rules**(a) Alternative minimum tax foreign tax credit**

For purposes of this part—

(1) In general

The alternative minimum tax foreign tax credit for any taxable year shall be the credit which would be determined under section 27 for such taxable year if—

(A) the pre-credit tentative minimum tax were the tax against which such credit was taken for purposes of section 904 for the taxable year and all prior taxable years beginning after December 31, 1986,

(B) section 904 were applied on the basis of alternative minimum taxable income instead of taxable income, and

(C) the determination of whether any income is high-taxed income for purposes of section 904(d)(2) were made on the basis of the applicable rate specified in section 55(b)(1) in lieu of the highest rate of tax specified in section 1.

(2) Pre-credit tentative minimum tax

For purposes of this subsection, the term “pre-credit tentative minimum tax” means the amount determined under the first sentence of section 55(b)(1)(A).

(3) Election to use simplified section 904 limitation**(A) In general**

In determining the alternative minimum tax foreign tax credit for any taxable year to which an election under this paragraph applies—

- (i) subparagraph (B) of paragraph (1) shall not apply, and

(ii) the limitation of section 904 shall be based on the proportion which—

(I) the taxpayer's taxable income (as determined for purposes of the regular tax) from sources without the United States (but not in excess of the taxpayer's entire alternative minimum taxable income), bears to

(II) the taxpayer's entire alternative minimum taxable income for the taxable year.

(B) Election

(i) In general

An election under this paragraph may be made only for the taxpayer's first taxable year which begins after December 31, 1997, and for which the taxpayer claims an alternative minimum tax foreign tax credit.

(ii) Election revocable only with consent

An election under this paragraph, once made, shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

[(b) Repealed. Pub. L. 115-97, title I, § 12001(b)(10), Dec. 22, 2017, 131 Stat. 2093]

(c) Treatment of estates and trusts

In the case of any estate or trust, the alternative minimum taxable income of such estate or trust and any beneficiary thereof shall be determined by applying part I of subchapter J with the adjustments provided in this part.

(d) Apportionment of differently treated items in case of certain entities

(1) In general

The differently treated items for the taxable year shall be apportioned (in accordance with regulations prescribed by the Secretary)—

(A) Regulated investment companies and real estate investment trusts

In the case of a regulated investment company to which part I of subchapter M applies or a real estate investment company to which part II of subchapter M applies, between such company or trust and shareholders and holders of beneficial interest in such company or trust.

(B) Common trust funds

In the case of a common trust fund (as defined in section 584(a)), pro rata among the participants of such fund.

(2) Differently treated items

For purposes of this section, the term "differently treated item" means any item of tax preference or any other item which is treated differently for purposes of this part than for purposes of computing the regular tax.

(e) Optional 10-year writeoff of certain tax preferences

(1) In general

For purposes of this title, any qualified expenditure to which an election under this paragraph applies shall be allowed as a deduction ratably over the 10-year period (3-year pe-

riod in the case of circulation expenditures described in section 173) beginning with the taxable year in which such expenditure was made (or, in the case of a qualified expenditure described in paragraph (2)(C), over the 60-month period beginning with the month in which such expenditure was paid or incurred).

(2) Qualified expenditure

For purposes of this subsection, the term "qualified expenditure" means any amount which, but for an election under this subsection, would have been allowable as a deduction (determined without regard to section 291) for the taxable year in which paid or incurred under—

(A) section 173 (relating to circulation expenditures),

(B) section 174(a) (relating to research and experimental expenditures),

(C) section 263(c) (relating to intangible drilling and development expenditures),

(D) section 616(a) (relating to development expenditures), or

(E) section 617(a) (relating to mining exploration expenditures).

(3) Other sections not applicable

Except as provided in this subsection, no deduction shall be allowed under any other section for any qualified expenditure to which an election under this subsection applies.

(4) Election

(A) In general

An election may be made under paragraph (1) with respect to any portion of any qualified expenditure.

(B) Revocable only with consent

Any election under this subsection may be revoked only with the consent of the Secretary.

(C) Partners and shareholders of S corporations

In the case of a partnership, any election under paragraph (1) shall be made separately by each partner with respect to the partner's allocable share of any qualified expenditure. A similar rule shall apply in the case of an S corporation and its shareholders.

(5) Dispositions

(A) Application of section 1254

In the case of any disposition of property to which section 1254 applies (determined without regard to this section), any deduction under paragraph (1) with respect to amounts which are allocable to such property shall, for purposes of section 1254, be treated as a deduction allowable under section 263(c), 616(a), or 617(a), whichever is appropriate.

(B) Application of section 617(d)

In the case of any disposition of mining property to which section 617(d) applies (determined without regard to this subsection), any deduction under paragraph (1) with respect to amounts which are allocable to such property shall, for purposes of section 617(d), be treated as a deduction allowable under section 617(a).

(6) Amounts to which election apply not treated as tax preference

Any portion of any qualified expenditure to which an election under paragraph (1) applies shall not be treated as an item of tax preference under section 57(a) and section 56 shall not apply to such expenditure.

[(f) Repealed. Pub. L. 115-97, title I, § 12001(b)(10), Dec. 22, 2017, 131 Stat. 2093]

(g) Tax benefit rule

The Secretary may prescribe regulations under which differently treated items shall be properly adjusted where the tax treatment giving rise to such items will not result in the reduction of the taxpayer's regular tax for the taxable year for which the item is taken into account or for any other taxable year.

(h) Coordination with certain limitations

The limitations of sections 704(d), 465, and 1366(d) (and such other provisions as may be specified in regulations) shall be applied for purposes of computing the alternative minimum taxable income of the taxpayer for the taxable year with the adjustments of sections 56, 57, and 58.

(i) Special rule for amounts treated as tax preference

For purposes of this subtitle (other than this part), any amount shall not fail to be treated as wholly exempt from tax imposed by this subtitle solely by reason of being included in alternative minimum taxable income.

(j) Treatment of unearned income of minor children

(1) In general

In the case of a child to whom section 1(g) applies, the exemption amount for purposes of section 55 shall not exceed the sum of—

- (A) such child's earned income (as defined in section 911(d)(2)) for the taxable year, plus
- (B) \$5,000.

(2) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 1998, the dollar amount in paragraph (1)(B) shall be increased by an amount equal to the product of—

- (A) such dollar amount, and
- (B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "1997" for "2016" in subparagraph (A)(ii) thereof.

If any increase determined under the preceding sentence is not a multiple of \$50, such increase shall be rounded to the nearest multiple of \$50.

(k) Applicable corporation

For purposes of this part—

(1) Applicable corporation defined

(A) In general

The term "applicable corporation" means, with respect to any taxable year, any corporation (other than an S corporation, a regulated investment company, or a real estate

investment trust) which meets the average annual adjusted financial statement income test of subparagraph (B) for one or more taxable years which—

- (i) are prior to such taxable year, and
- (ii) end after December 31, 2021.

(B) Average annual adjusted financial statement income test

For purposes of this subsection—

(i) a corporation meets the average annual adjusted financial statement income test for a taxable year if the average annual adjusted financial statement income of such corporation (determined without regard to section 56A(d) for the 3-taxable-year period ending with such taxable year exceeds \$1,000,000,000, and

(ii) in the case of a corporation described in paragraph (2), such corporation meets the average annual adjusted financial statement income test for a taxable year if—

(I) the corporation meets the requirements of clause (i) for such taxable year (determined after the application of paragraph (2)), and

(II) the average annual adjusted financial statement income of such corporation (determined without regard to the application of paragraph (2) and without regard to section 56A(d) for the 3-taxable-year-period ending with such taxable year is \$100,000,000 or more.

(C) Exception

Notwithstanding subparagraph (A), the term "applicable corporation" shall not include any corporation which otherwise meets the requirements of subparagraph (A) if—

(i) such corporation—

- (I) has a change in ownership, or
- (II) has a specified number (to be determined by the Secretary and which shall, as appropriate, take into account the facts and circumstances of the taxpayer) of consecutive taxable years, including the most recent taxable year, in which the corporation does not meet the average annual adjusted financial statement income test of subparagraph (B), and

(ii) the Secretary determines that it would not be appropriate to continue to treat such corporation as an applicable corporation.

The preceding sentence shall not apply to any corporation if, after the Secretary makes the determination described in clause (ii), such corporation meets the average annual adjusted financial statement income test of subparagraph (B) for any taxable year beginning after the first taxable year for which such determination applies.

(D) Special rules for determining applicable corporation status

Solely for purposes of determining whether a corporation is an applicable corporation under this paragraph, all adjusted financial statement income of persons treated as a

single employer with such corporation under subsection (a) or (b) of section 52 shall be treated as adjusted financial statement income of such corporation, and adjusted financial statement income of such corporation shall be determined without regard to paragraphs (2)(D)(i) and (11) of section 56A(c).

(E) Other special rules

(i) Corporations in existence for less than 3 years

If the corporation was in existence for less than 3-taxable years, subparagraph (B) shall be applied on the basis of the period during which such corporation was in existence.

(ii) Short taxable years

Adjusted financial statement income for any taxable year of less than 12 months shall be annualized by multiplying the adjusted financial statement income for the short period by 12 and dividing the result by the number of months in the short period.

(iii) Treatment of predecessors

Any reference in this subparagraph to a corporation shall include a reference to any predecessor of such corporation.

(2) Special rule for foreign-parented multinational groups

(A) In general

If a corporation is a member of a foreign-parented multinational group for any taxable year, then, solely for purposes of determining whether such corporation meets the average annual adjusted financial statement income test under paragraph (1)(B)(ii)(I) for such taxable year, the adjusted financial statement income of such corporation for such taxable year shall include the adjusted financial statement income of all members of such group. Solely for purposes of this subparagraph, adjusted financial statement income shall be determined without regard to paragraphs (2)(D)(i), (3), (4), and (11) of section 56A(c).

(B) Foreign-parented multinational group

For purposes of subparagraph (A), the term “foreign-parented multinational group” means, with respect to any taxable year, two or more entities if—

(i) at least one entity is a domestic corporation and another entity is a foreign corporation,

(ii) such entities are included in the same applicable financial statement with respect to such year, and

(iii) either—

(I) the common parent of such entities is a foreign corporation, or

(II) if there is no common parent, the entities are treated as having a common parent which is a foreign corporation under subparagraph (D).

(C) Foreign corporations engaged in a trade or business within the United States

For purposes of this paragraph, if a foreign corporation is engaged in a trade or business

within the United States, such trade or business shall be treated as a separate domestic corporation that is wholly owned by the foreign corporation.

(D) Other rules

The Secretary shall, applying the principles of this section, prescribe rules for the application of this paragraph, including rules for the determination of—

(i) the entities (if any) which are to be treated under subparagraph (B)(iii)(II) as having a common parent which is a foreign corporation,

(ii) the entities to be included in a foreign-parented multinational group, and

(iii) the common parent of a foreign-parented multinational group.

(3) Regulations or other guidance

The Secretary shall provide regulations or other guidance for the purposes of carrying out this subsection, including regulations or other guidance—

(A) providing a simplified method for determining whether a corporation meets the requirements of paragraph (1), and

(B)¹ addressing the application of this subsection to a corporation that experiences a change in ownership.

(I) Corporate AMT foreign tax credit

(1) In general

For purposes of this part, if an applicable corporation chooses to have the benefits of subpart A of part III of subchapter N for any taxable year, the corporate AMT foreign tax credit for the taxable year of the applicable corporation is an amount equal to sum of—

(A) the lesser of—

(i) the aggregate of the applicable corporation's pro rata share (as determined under section 56A(c)(3)) of the amount of income, war profits, and excess profits taxes (within the meaning of section 901) imposed by any foreign country or possession of the United States which are—

(I) taken into account on the applicable financial statement of each controlled foreign corporation with respect to which the applicable corporation is a United States shareholder, and

(II) paid or accrued (for Federal income tax purposes) by each such controlled foreign corporation, or

(ii) the product of the amount of the adjustment under section 56A(c)(3) and the percentage specified in section 55(b)(2)(A)(i), and

(B) in the case of an applicable corporation that is a domestic corporation, the amount of income, war profits, and excess profits taxes (within the meaning of section 901) imposed by any foreign country or possession of the United States to the extent such taxes are—

(i) taken into account on the applicable corporation's applicable financial statement, and

¹ So in original.

(ii) paid or accrued (for Federal income tax purposes) by the applicable corporation.

(2) Carryover of excess tax paid

For any taxable year for which an applicable corporation chooses to have the benefits of subpart A of part III of subchapter N, the excess of the amount described in paragraph (1)(A)(i) over the amount described in paragraph (1)(A)(ii) shall increase the amount described in paragraph (1)(A)(i) in any of the first 5 succeeding taxable years to the extent not taken into account in a prior taxable year.

(3) Regulations or other guidance

The Secretary shall provide for such regulations or other guidance as is necessary to carry out the purposes of this subsection.

(Added Pub. L. 99-514, title VII, §701(a), Oct. 22, 1986, 100 Stat. 2336; amended Pub. L. 100-647, title I, §§1007(e), 1014(e)(5)(A), Nov. 10, 1988, 102 Stat. 3432, 3561; Pub. L. 101-239, title VII, §§7611(f)(5)(B), (6), 7612(e)(1), 7811(d)(1)(A), (j)(7), Dec. 19, 1989, 103 Stat. 2373, 2374, 2408, 2412; Pub. L. 101-508, title XI, §§11101(d)(3), 11531(b)(2), 11702(d), 11801(c)(2)(D), Nov. 5, 1990, 104 Stat. 1388-405, 1388-490, 1388-514, 1388-523; Pub. L. 102-486, title XIX, §1915(c)(3), Oct. 24, 1992, 106 Stat. 3024; Pub. L. 104-188, title I, §§1601(b)(2)(D), 1702(a)(1), 1703(e), 1704(m)(3), Aug. 20, 1996, 110 Stat. 1833, 1868, 1875, 1883; Pub. L. 105-34, title X, §1057(a), title XI, §1103(a), title XII, §1201(b)(1), Aug. 5, 1997, 111 Stat. 945, 966, 994; Pub. L. 105-206, title VI, §§6011(a), 6023(2), July 22, 1998, 112 Stat. 817, 824; Pub. L. 108-357, title IV, §421(a)(1), Oct. 22, 2004, 118 Stat. 1514; Pub. L. 115-97, title I, §§11002(d)(4), 12001(b)(3)(C), (10), Dec. 22, 2017, 131 Stat. 2061, 2093; Pub. L. 115-141, div. U, title IV, §401(d)(1)(D)(ii), Mar. 23, 2018, 132 Stat. 1206; Pub. L. 117-169, title I, §§10101(a)(2), (c), 13904(a), Aug. 16, 2022, 136 Stat. 1818, 1827, 2014.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

Editorial Notes

AMENDMENTS

2022—Subsec. (k). Pub. L. 117-169, §10101(a)(2), added subsec. (k).

Subsec. (k)(1)(D). Pub. L. 117-169, §13904(a), amended subpar. (D) generally. Prior to amendment, text of subpar. (D) read as follows:

“(i) **IN GENERAL.**—Solely for purposes of determining whether a corporation is an applicable corporation under this paragraph, all adjusted financial statement income of persons treated as a single employer with such corporation under subsection (a) or (b) of section 52 (determined with the modifications described in clause (ii)) shall be treated as adjusted financial statement income of such corporation, and adjusted financial statement income of such corporation shall be determined without regard to paragraphs (2)(D)(i) and (11) of section 56A(c).

“(ii) **MODIFICATIONS.**—For purposes of this subparagraph—

“(I) section 52(a) shall be applied by substituting ‘component members’ for ‘members’, and

“(II) for purposes of applying section 52(b), the term ‘trade or business’ shall include any activity treated

as a trade or business under paragraph (5) or (6) of section 469(c) (determined without regard to the phrase ‘To the extent provided in regulations’ in such paragraph (6)).

“(iii) **COMPONENT MEMBER.**—For purposes of this subparagraph, the term ‘component member’ has the meaning given such term by section 1563(b), except that the determination shall be made without regard to section 1563(b)(2).”

Subsec. (l). Pub. L. 117-169, §10101(c), added subsec. (l). 2018—Subsec. (a)(1). Pub. L. 115-141 substituted “27” for “27(a)” in introductory provisions.

2017—Subsec. (a)(1)(C). Pub. L. 115-97, §12001(b)(3)(C)(i), substituted “section 55(b)(1) in lieu of the highest rate of tax specified in section 1” for “subparagraph (A)(i) or (B)(i) of section 55(b)(1) (whichever applies) in lieu of the highest rate of tax specified in section 1 or 11 (whichever applies)”.

Subsec. (a)(2). Pub. L. 115-97, §12001(b)(3)(C)(ii), substituted “means the amount determined under the first sentence of section 55(b)(1)(A).” for “means—

“(A) in the case of a taxpayer other than a corporation, the amount determined under the first sentence of section 55(b)(1)(A)(i), or

“(B) in the case of a corporation, the amount determined under section 55(b)(1)(B)(i).”

Subsec. (b). Pub. L. 115-97, §12001(b)(10), struck out subsec. (b). Text read as follows: “In the case of any corporation for which a credit is allowable for the taxable year under section 30A or 936, alternative minimum taxable income shall not include any income with respect to which a credit is determined under section 30A or 936.”

Subsec. (f). Pub. L. 115-97, §12001(b)(10), struck out subsec. (f). Text read as follows: “Except as otherwise provided in this part, section 291 (relating to cutback of corporate preferences) shall apply before the application of this part.”

Subsec. (j)(2)(B). Pub. L. 115-97, §11002(d)(4), substituted “for ‘2016’ in subparagraph (A)(ii)” for “for ‘1992’ in subparagraph (B)”.

2004—Subsec. (a)(2) to (4). Pub. L. 108-357 redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which related to limitation on alternative minimum tax foreign tax credit and carryback and carryforward of excess.

1998—Subsec. (a)(3), (4). Pub. L. 105-206, §6011(a), redesignated par. (3), relating to election to use simplified section 904 limitation, as (4).

Subsec. (b). Pub. L. 105-206, §6023(2), substituted “credits under section 30A or 936” for “section 936 credit” in heading.

1997—Subsec. (a)(2)(C). Pub. L. 105-34, §1057(a), struck out subpar. (C) which read as follows:

“(C) **EXCEPTION.**—Subparagraph (A) shall not apply to any domestic corporation if—

“(i) more than 50 percent of the stock of such domestic corporation (by vote and value) is owned by United States persons who are not members of an affiliated group (as defined in section 1504 of such Code) which includes such corporation,

“(ii) all of the activities of such corporation are conducted in 1 foreign country with which the United States has an income tax treaty in effect and such treaty provides for the exchange of information between such foreign country and the United States,

“(iii) all of the current earnings and profits of such corporation are distributed at least annually (other than current earnings and profits retained for normal maintenance or capital replacements or improvements of an existing business), and

“(iv) all of such distributions by such corporation to United States persons are used by such persons in a trade or business conducted in the United States.” Subsec. (a)(3). Pub. L. 105-34, §1103(a), added par. (3) relating to election to use simplified section 904 limitation.

Subsec. (j). Pub. L. 105-34, §1201(b)(1), amended subsec. (j) generally, restating limitation on exemption amount, adding provisions for inflation adjustment of

such amount, and deleting provisions relating to limitation based on parental minimum tax and unused parental minimum tax exemption.

1996—Subsec. (a)(1)(A). Pub. L. 104-188, §1703(e)(1), substituted “the pre-credit tentative minimum tax” for “the amount determined under section 55(b)(1)(A)”.

Subsec. (a)(1)(C). Pub. L. 104-188, §1703(e)(2), substituted “specified in subparagraph (A)(i) or (B)(i) of section 55(b)(1) (whichever applies)” for “specified in section 55(b)(1)(A)”.

Subsec. (a)(2)(A)(i). Pub. L. 104-188, §1703(e)(1), substituted “the pre-credit tentative minimum tax” for “the amount determined under section 55(b)(1)(A)”.

Subsec. (a)(2)(A)(ii). Pub. L. 104-188, §1703(e)(3), substituted “which would be the pre-credit tentative minimum tax” for “which would be determined under section 55(b)(1)(A)”.

Subsec. (a)(3). Pub. L. 104-188, §1703(e)(4), added par. (3).

Subsec. (b). Pub. L. 104-188, §1601(b)(2)(D), substituted “section 30A or 936, alternative minimum taxable income shall not include any income with respect to which a credit is determined under section 30A or 936.” for “section 936, alternative minimum taxable income shall not include any amount with respect to which the requirements of subparagraph (A) or (B) of section 936(a)(1) are met.”

Subsec. (j)(1)(B). Pub. L. 104-188, §1704(m)(3), substituted “twice the amount in effect for the taxable year under section 63(c)(5)(A)” for “\$1,000”.

Subsec. (j)(3)(B). Pub. L. 104-188, §1702(a)(1), substituted “section 1(g)(3)(B)” for “section 1(i)(3)(B)”.

1992—Subsec. (a)(2)(A)(ii). Pub. L. 102-486 substituted “and section 57(a)(2)(E)” for “and the alternative tax energy preference deduction under section 56(h)”.

1990—Subsec. (a)(1)(B) to (D). Pub. L. 101-508, §11801(c)(2)(D), inserted “and” at end of subpar. (B), re-designated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: “for purposes of section 904, any increase in alternative minimum taxable income by reason of section 56(c)(1)(A) (relating to adjustment for book income) shall have the same proportionate source (and character) as alternative minimum taxable income determined without regard to such increase, and”.

Subsec. (a)(2)(A)(ii). Pub. L. 101-508, §11531(b)(2), inserted before period at end “and the alternative tax energy preference deduction under section 56(h)”.

Subsec. (j). Pub. L. 101-508, §11101(d)(3)(A), substituted “section 1(g)” for “section 1(i)” in pars. (1), (2)(A), (B)(i)(I), (II), (D), and (3).

Subsec. (j)(1)(B). Pub. L. 101-508, §11702(d)(1), inserted “(or, if greater, the child’s share of the unused parental minimum tax exemption)” before period at end.

Subsec. (j)(2)(C). Pub. L. 101-508, §11101(d)(3)(B), substituted “section 1(g)(3)(B)” for “section 1(i)(3)(B)”.

Subsec. (j)(2)(D). Pub. L. 101-508, §11702(d)(3), substituted “paragraphs (3)(D), (5), and (6)” for “paragraphs (5) and (6)”.

Subsec. (j)(3). Pub. L. 101-508, §11702(d)(2), added par. (3).

1989—Subsec. (a)(2)(C). Pub. L. 101-239, §7612(e)(1), added subpar. (C).

Subsec. (e)(1). Pub. L. 101-239, §7611(f)(5)(B), inserted before period at end “(or, in the case of a qualified expenditure described in paragraph (2)(C), over the 60-month period beginning with the month in which such expenditure was paid or incurred)”.

Subsec. (g). Pub. L. 101-239, §7811(d)(1)(A), substituted “for the taxable year for which the item is taken into account or for any other taxable year” for “for any taxable year”.

Subsec. (i). Pub. L. 101-239, §7611(f)(6), substituted “amounts” for “interest” in heading and “any amount shall” for “interest shall” in text.

Subsec. (j)(2)(D). Pub. L. 101-239, §7811(j)(7), substituted “Other rules” for “Others rules” in heading.

1988—Subsec. (a)(1)(D). Pub. L. 100-647, §1007(e)(3), added subpar. (D).

Subsec. (e)(2). Pub. L. 100-647, §1007(e)(1), inserted “(determined without regard to section 291)” after “as a deduction”.

Subsec. (h). Pub. L. 100-647, §1007(e)(2), substituted “taxable year with the adjustments of sections 56, 57, and 58” for “taxable year—

“(1) with the adjustments of section 56, and

“(2) by not taking into account any deduction to the extent such deduction is an item of tax preference under section 57(a)”.

Subsec. (i). Pub. L. 100-647, §1007(e)(4), inserted “(other than this part)” after “of this subtitle” and substituted “subtitle” for “title” before “solely”.

Subsec. (j). Pub. L. 100-647, §1014(e)(5)(A), added subsec. (j).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by section 10101(a)(2), (c) of Pub. L. 117-169 applicable to taxable years beginning after Dec. 31, 2022, see section 10101(f) of Pub. L. 117-169, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 11002(d)(4) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 11002(e) of Pub. L. 115-97, set out as a note under section 1 of this title.

Amendment by section 12001(b)(3)(C), (10) of 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 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years beginning after Dec. 31, 2004, see section 421(b) of Pub. L. 108-357, set out as a note under section 53 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6023(2) of Pub. L. 105-206 effective July 22, 1998, see section 6023(32) of Pub. L. 105-206, set out as a note under section 34 of this title.

Amendment by section 6011(a) of Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title X, §1057(b), Aug. 5, 1997, 111 Stat. 945, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997].”

Pub. L. 105-34, title XI, §1103(b), Aug. 5, 1997, 111 Stat. 966, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.”

Pub. L. 105-34, title XII, §1201(c), Aug. 5, 1997, 111 Stat. 994, provided that: “The amendments made by this section [amending this section and sections 63 and 6103 of this title] shall apply to taxable years beginning after December 31, 1997.”

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1601(b)(2)(D) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1995, except as otherwise provided, see section 1601(c) of Pub. L. 104-188, set out as a note under section 55 of this title.

Amendment by section 1702(a)(1) of Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

Amendment by section 1703(e) of Pub. L. 104-188 effective as if included in the provision of the Revenue Rec-

conciliation 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.

Amendment by section 1704(m)(3) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1995, see section 1704(m)(4) of Pub. L. 104-188, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-486 applicable to taxable years beginning after Dec. 31, 1992, see section 1915(d) of Pub. L. 102-486, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(3) of Pub. L. 101-508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101-508, set out as a note under section 1 of this title.

Amendment by section 11531(b)(2) of Pub. L. 101-508 applicable to taxable years beginning after Dec. 31, 1990, see section 11531(c) of Pub. L. 101-508, set out as a note under section 56 of this title.

Pub. L. 101-508, title XI, § 11702(j), Nov. 5, 1990, 104 Stat. 1388-516, provided that: "Any amendment made by this section [amending this section and sections 135, 216, 355, 367, 447, 453B, 468B, 2056, 2056A, 2523, 4980B, and 6114 of this title] shall take effect as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988 [Pub. L. 100-647] to which such amendment relates."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7611(f)(6) of Pub. L. 101-239 applicable to taxable years beginning after Dec. 31, 1989, see section 7611(g)(1) of Pub. L. 101-239, set out as a note under section 56 of this title.

Amendment by section 7611(f)(5)(B) of Pub. L. 101-239 applicable to costs paid or incurred in taxable years beginning after Dec. 31, 1989, see section 7611(g)(2) of Pub. L. 101-239, set out as a note under section 56 of this title.

Pub. L. 101-239, title VII, § 7612(e)(2), Dec. 19, 1989, 103 Stat. 2375, provided that:

"(A) IN GENERAL.—The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after March 31, 1990.

"(B) SPECIAL RULE FOR YEAR WHICH INCLUDES MARCH 31, 1990.—In the case of any taxable year (of a corporation described in subparagraph (C) of section 59(a)(2) of the Internal Revenue Code of 1986 (as added by paragraph (1)) which begins after December 31, 1989, and includes March 31, 1990, the amount determined under clause (ii) of section 59(a)(2)(A) of such Code shall be an amount which bears the same ratio to the amount which would have been determined under such clause without regard to this subparagraph as the number of days in such taxable year on or before March 31, 1990, bears to the total number of days in such taxable year."

Amendment by section 7811(d)(1)(A), (j)(7) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1007(e) 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 I, § 1014(e)(5)(B), Nov. 10, 1988, 102 Stat. 3562, provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1988."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99-514, set out as a note under section 55 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 115-141 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Mar. 23, 2018, for purposes of determining liability for tax for periods ending after Mar. 23, 2018, see section 401(e) of Pub. L. 115-141, set out as a note under section 23 of this title.

For provisions that nothing in amendment by section 11801 of Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

CONSIDERATION OF CERTAIN TAXES TREATED AS PAID OR ACCRUED UNDER SECTION 904(C) IN DETERMINATION OF ALTERNATIVE MINIMUM TAX FOREIGN TAX CREDIT

Pub. L. 100-647, title I, § 1007(f)(5), Nov. 10, 1988, 102 Stat. 3434, provided that: "In determining the amount of the alternative minimum tax foreign tax credit under section 59 of the 1986 Code, there shall not be taken into account any taxes paid or accrued in a taxable year beginning after December 31, 1986, which are treated under section 904(c) of the 1986 Code as paid or accrued in a taxable year beginning on or before December 31, 1986."

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

For applicability of amendment by section 701(a) of Pub. L. 99-514 [enacting this section] 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.

PART VII—BASE EROSION AND ANTI-ABUSE TAX

Sec. 59A. Tax on base erosion payments of taxpayers with substantial gross receipts.

Editorial Notes

PRIOR PROVISIONS

A prior part VII, Environmental Tax, consisted of section 59A, prior to repeal by Pub. L. 113-295, div. A, title II, § 221(a)(12)(A), Dec. 19, 2014, 128 Stat. 4038.

§ 59A. Tax on base erosion payments of taxpayers with substantial gross receipts

(a) Imposition of tax

There is hereby imposed on each applicable taxpayer for any taxable year a tax equal to the base erosion minimum tax amount for the taxable year. Such tax shall be in addition to any other tax imposed by this subtitle.

(b) Base erosion minimum tax amount

For purposes of this section—

(1) In general

Except as provided in paragraphs (2) and (3), the term "base erosion minimum tax amount"