

Section 860K, added Pub. L. 104-188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1861, related to treatment of transfers of high-yield interests to disqualified holders.

Section 860L, added Pub. L. 104-188, title I, §1621(a), Aug. 20, 1996, 110 Stat. 1862; amended Pub. L. 105-34, title XVI, §1601(f)(6), Aug. 5, 1997, 111 Stat. 1091, defined terms and set forth special rules relating to FASITs.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF REPEAL

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

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

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

Editorial Notes

AMENDMENTS

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

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

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

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

Editorial Notes

AMENDMENTS

1988—Pub. L. 100-647, title I, §§1012(e)(3)(B), (h)(2)(C), 1018(u)(37), Nov. 10, 1988, 102 Stat. 3500, 3502, 3592, substituted “SOURCE RULES AND OTHER GENERAL RULES RELATING TO FOREIGN INCOME” for “DETERMINATION OF SOURCES OF INCOME” as part I heading, substituted “Special rules for determining source” for “Items not specified in section 861 or 862” in item 863, and added item 865.

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

§ 861. Income from sources within the United States

(a) Gross income from sources within United States

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

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

(1) Interest

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

(A) interest—

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

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

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

(2) Dividends

The amount received as dividends—

(A) from a domestic corporation, or

(B) from a foreign corporation unless less than 25 percent of the gross income from all sources of such foreign corporation for the 3-year period ending with the close of its taxable year preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence) was effectively connected (or treated as effectively connected other than income described in section 884(d)(2)) with the conduct of a trade or business within the United States; but only in an amount which bears the same ratio to such dividends as the gross income of the corporation for such period which was effectively connected (or treated as effectively connected other than income described in section 884(d)(2)) with the conduct of a trade or business within the United States bears to its gross income from all sources; but dividends (other than dividends for which a deduction is allowable under section 245(b)) from a foreign corporation shall, for purposes of subpart A of part III (relating to foreign tax credit), be treated as income from sources without the United States to the extent (and only to the extent) exceeding the amount which is 100/50th of the amount of the deduction allowable under section 245 in respect of such dividends, or

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

(D) from a DISC or former DISC (as defined in section 992(a)) except to the extent attributable (as determined under regulations prescribed by the Secretary) to quali-

fied export receipts described in section 993(a)(1) (other than interest and gains described in section 995(b)(1)).

In the case of any dividend from a 20-percent owned corporation (as defined in section 243(c)(2)), subparagraph (B) shall be applied by substituting “100/65th” for “100/50th”.

(3) Personal services

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

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

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

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

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

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

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

(4) Rentals and royalties

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

(5) Disposition of United States real property interest

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

(6) Sale or exchange of inventory property

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

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

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

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

(8) Social security benefits

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

(9) Guarantees

Amounts received, directly or indirectly, from—

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

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

(b) Taxable income from sources within United States

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

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

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

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

(1) General rule

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

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

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

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

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

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

(3) Denial of foreign tax credit

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

(e) Cross reference

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

(Aug. 16, 1954, ch. 736, 68A Stat. 275; Pub. L. 86-779, §3(b), Sept. 14, 1960, 74 Stat. 998; Pub. L. 87-834, §9(c), Oct. 16, 1962, 76 Stat. 1001; Pub. L. 89-809, title I, §102(a)(1)-(3), (b), (c), Nov. 13, 1966, 80 Stat. 1541-1543; Pub. L. 91-172, title IV, §435(a), Dec. 30, 1969, 83 Stat. 625; Pub. L. 92-9, §3(a)(2), Apr. 1, 1971, 85 Stat. 15; Pub. L. 92-178, title III, §314(a), title V, §503, Dec. 10, 1971, 85 Stat. 528, 550; Pub. L. 93-625, §§8, 9(a), Jan. 3, 1975, 88 Stat. 2116; Pub. L. 94-455, title X, §§1036(a), 1041, 1051(h)(3), title XIX, §§1901(b)(26)(A), (B), (c)(7), 1904(b)(10)(B), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1633, 1634, 1647, 1798, 1803, 1817, 1834; Pub. L. 95-30, title I, §102(b)(9), May 23, 1977, 91 Stat. 138; Pub. L. 95-600, title III, §370(a), title V, §540(a), Nov. 6, 1978, 92 Stat. 2858, 2887; Pub. L. 96-499, title XI, §1124, Dec. 5, 1980, 94 Stat. 2690; Pub. L. 96-605, title I, §104(a), Dec. 28, 1980, 94 Stat. 3523; Pub. L. 98-21, title I, §121(d), Apr. 20, 1983, 97 Stat. 83; Pub. L. 99-514, title I, §104(b)(11), title XII, §§1211(b)(1)(B), 1212(d), 1214(a), (b), (c)(5), 1241(b), Oct. 22, 1986, 100 Stat. 2105, 2536, 2539, 2541-2543, 2579; Pub. L. 100-203, title X, §10221(d)(4), Dec. 22, 1987, 101 Stat. 1330-409; Pub. L. 100-647, title I, §§1012(g)(3), (i)(10), (14)(B), (q)(7), (9), (15), 1018(u)(39), Nov. 10, 1988, 102 Stat. 3501, 3509, 3510, 3524, 3525, 3592; Pub. L. 101-239, title VII,

§§7811(i)(2), 7841(d)(9), Dec. 19, 1989, 103 Stat. 2409, 2428; Pub. L. 101-508, title XI, §§11801(a)(29), (c)(6)(C), (14), 11813(b)(17), Nov. 5, 1990, 104 Stat. 1388-521, 1388-524, 1388-527, 1388-555; Pub. L. 104-188, title I, §1702(h)(9), Aug. 20, 1996, 110 Stat. 1874; Pub. L. 105-34, title XI, §1174(a)(1), Aug. 5, 1997, 111 Stat. 989; Pub. L. 107-16, title VI, §621(a), June 7, 2001, 115 Stat. 111; Pub. L. 108-357, title IV, §410(a), Oct. 22, 2004, 118 Stat. 1500; Pub. L. 111-226, title II, §217(a), (c)(1), Aug. 10, 2010, 124 Stat. 2400, 2402; Pub. L. 111-240, title II, §2122(a), Sept. 27, 2010, 124 Stat. 2567; Pub. L. 115-97, title I, §13002(e), Dec. 22, 2017, 131 Stat. 2100; Pub. L. 115-141, div. U, title IV, §401(d)(1)(D)(ix), Mar. 23, 2018, 132 Stat. 1207.)

Editorial Notes

AMENDMENTS

2018—Subsec. (a)(2)(A). Pub. L. 115-141 struck out “other than a corporation which has an election in effect under section 936” after “corporation”.

2017—Subsec. (a)(2). Pub. L. 115-97, §13002(e)(2), substituted “100/65th” for “100/80th” and “100/50th” for “100/70th” in concluding provisions.

Subsec. (a)(2)(B). Pub. L. 115-97, §13002(e)(1), substituted “100/50th” for “100/70th”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (a)(1)(A). Pub. L. 99-514, §1214(a)(1), (c)(5)(A), amended subpar. (B) generally and redesignated it as (A). Prior to amendment and redesignation, former subpar. (B) read as follows: “interest received from a resident alien individual or a domestic corporation, when it is shown to the satisfaction of the Secretary that less than 20 percent of the gross income from all sources of such individual or such corporation has been derived from sources within the United States, as determined under the provisions of this part, for the 3-year period ending with the close of the taxable year of

such individual or such corporation preceding the payment of such interest, or for such part of such period as may be applicable.” Former subpar. (A), which read “interest on amounts described in subsection (c) received by a nonresident alien individual or a foreign corporation, if such interest is not effectively connected with the conduct of a trade or business within the United States.”, was struck out.

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

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

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

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

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

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

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

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

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

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

Subsec. (a)(2)(A). Pub. L. 99-514, §1214(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “from a domestic corporation other than a corporation which has an election in effect under section 936, and other than a corporation less than 20 percent of whose gross income is shown to the satisfaction of the Secretary to have been derived from sources within the United States, as determined under

the provisions of this part, for the 3-year period ending with the close of the taxable year of such corporation preceding the declaration of such dividends (or for such part of such period as the corporation has been in existence), or”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (c)(3). Pub. L. 93-625, §8, substituted “1976” for “1975”.

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

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

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

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

Subsec. (c)(3). Pub. L. 91-172, §435(a)(2), substituted “1975” for “1972”.

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

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

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

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

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

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

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

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

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 13002(f) of Pub. L. 115-97, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

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

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

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

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

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

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

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

EFFECTIVE DATE OF 2004 AMENDMENT

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

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-16, title VI, §621(b), June 7, 2001, 115 Stat. 111, provided that: “The amendment made by subsection (a) [amending this section] shall apply to remuneration for services performed in plan years beginning after December 31, 2001.”

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE OF 1996 AMENDMENT

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

EFFECTIVE DATE OF 1990 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years

ending after such date, see section 10221(e)(1) of Pub. L. 100-203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

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

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

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

Pub. L. 99-514, title XII, §1214(d), Oct. 22, 1986, 100 Stat. 2543, as amended by Pub. L. 100-647, title I, §1012(g)(1)(A), (2), Nov. 10, 1988, 102 Stat. 3500, 3501, provided that:

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

“(2) TREATMENT OF CERTAIN INTEREST.—

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

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

“(3) TRANSITIONAL RULE.—

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

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

“(4) CERTAIN DIVIDENDS.—

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

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

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

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

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

[Pub. L. 100-647, title I, §1012(g)(1)(B), Nov. 10, 1988, 102 Stat. 3500, provided that: “A taxpayer may elect not to have the amendment made by subparagraph (A) [amending section 1214(d)(1) of Pub. L. 99-514, set out above] apply and to have section 1214(d)(1) of the Reform Act [section 1214(d)(1) of Pub. L. 99-514, set out

above] apply as in effect before such amendment. Such election shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.”]

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

EFFECTIVE DATE OF 1983 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96-605, title I, §104(b), Dec. 28, 1980, 94 Stat. 3523, provided that: “The amendment made by subsection (a) [amending this section] shall apply to property first leased after the date of the enactment of this Act [Dec. 28, 1980].”

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

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title III, §370(b), Nov. 6, 1978, 92 Stat. 2858, provided that:

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

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

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

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

Pub. L. 95-600, title V, §540(b), Nov. 6, 1978, 92 Stat. 2887, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 6, 1978].”

EFFECTIVE DATE OF 1977 AMENDMENT

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

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title I, §1036(c), Oct. 4, 1976, 90 Stat. 1633, provided that: “The amendments made by this section [amending this section and section 862 of this title] shall apply to taxable years beginning after December 31, 1976.”

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

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

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

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93-625, §9(c), Jan. 3, 1975, 88 Stat. 2116, provided that: “The amendment made by subsection (a) [amending this section] applies to interest paid after the date of enactment of this Act [Jan. 3, 1975], and the amendment made by subsection (b) [amending section 2104 of this title] applies with respect to estates of decedents dying after such date.”

EFFECTIVE DATE OF 1971 AMENDMENTS

Pub. L. 92-9, §3(a)(3), Apr. 1, 1971, 85 Stat. 15, provided that: “The amendments made by this subsection [amending this section and section 4912 of this title] shall take effect on the date of the enactment of this Act [Apr. 1, 1971].”

Pub. L. 92-178, title III, §314(c), Dec. 10, 1971, 85 Stat. 528, provided that: “The amendments made by this section [amending this section and section 862 of this title] shall apply to taxable years ending after August 15, 1971, but only with respect to leases entered into after such date.”

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

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-172, title IV, §435(a)(1), Dec. 30, 1969, 83 Stat. 625, provided that the amendment made by that section is effective with respect to amounts paid or credited after Dec. 31, 1969.

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-809, title I, §102(e), Nov. 13, 1966, 80 Stat. 1547, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

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

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

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-834 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1964, and in respect of any distribution received by a domestic corporation before Jan. 1, 1965, in a taxable year of such corporation beginning after Dec. 31, 1962, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after Dec. 31, 1962, see section 9(e) of Pub. L. 87-834, set out as an Effective Date note under section 78 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

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

SHORT TITLE OF 1971 AMENDMENT

Pub. L. 92-9, §1(a), Apr. 1, 1971, 85 Stat. 13, provided that: “This Act [amending this section and sections

4911, 4912, 4914 to 4916, 4919 to 4921, 6651, 6680, and 6681 of this title and enacting provisions set out as notes under this section and sections 6680 and 6681 of this title] may be cited as the 'Interest Equalization Tax Extension Act of 1971.'"

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89-809, title I, §101, Nov. 13, 1966, 80 Stat. 1541, provided that: "This title [enacting sections 877, 896, 906, 981, 2107, 2108, and 6683 of this title, amending this section and sections 1, 11, 116, 154, 245, 301, 512, 542, 543, 545, 819, 821, 822, 831, 832, 841, 842, 864, 871, 872, 873, 874, 875, 881, 882, 884, 894, 895, 901, 904, 911, 931, 932, 952, 953, 1248, 1249, 1441, 1442, 1461, 2014, 2101, 2102, 2104, 2105, 2106, 2501, 2511, 3401, 6015, 6016, 6018, 6501, 6513, and 7701 of this title, redesignating former section 877 as 878, repealing section 1493, and enacting provisions set out as notes under this section and sections 11, 871, 874, 894, 901, 904, 931, 2101, 2501, and 6501 of this title] may be cited as the 'Foreign Investors Tax Act of 1966.'"

SAVINGS PROVISIONS

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 Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

DIVIDENDS RECEIVED OR ACCRUED DURING 1987

Subsec. (a)(2)(B) of this section to be applied by substituting "100/80ths" for the fraction specified therein with regard to dividends received or accrued during 1987, see section 1006(b)(1)(B) of Pub. L. 100-647 set out as a note under section 245 of this title.

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

Pub. L. 100-647, title I, §1012(aa)(2)-(4), Nov. 10, 1988, 102 Stat. 3531, 3532, provided that:

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

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

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

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

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

"(i) such amendments apply in the case of an individual treated as a resident of a foreign country

under a treaty obligation of the United States as so in effect, or

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

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

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

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

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

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

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

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

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

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

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

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

Pub. L. 100-647, title IV, §4009, Nov. 10, 1988, 102 Stat. 3653, provided that:

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

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

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

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

"(B) that such expenditures are attributable to activities conducted outside the United States, 64 percent of such expenditures shall be allocated and

apportioned to income from sources outside the United States and deducted from such income in determining the amount of taxable income from sources outside the United States.

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

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

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

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

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

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

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

“(A) in space,

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

“(C) in Antarctica.

“(d) AFFILIATED GROUP.—

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

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

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

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

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

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

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

“(e) YEARS TO WHICH SECTION APPLIES.—

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

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

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

“(B) the number of months in the taxable year.”

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

Pub. L. 99-514, title XII, § 1216, Oct. 22, 1986, 100 Stat. 2549, provided that:

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

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

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

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

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

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

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

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

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

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

ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES

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

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

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

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

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

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

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

“(c) EFFECTIVE DATES.—

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

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

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

Pub. L. 89-809, title I, §110, Nov. 13, 1966, 80 Stat. 1575, provided that: “No amendment made by this title [see Short Title note above] shall apply in any case where its application would be contrary to any treaty obligation of the United States. For purposes of the preceding sentence, the extension of a benefit provided by any amendment made by this title shall not be deemed to be contrary to a treaty obligation of the United States.”

§ 862. Income from sources without the United States

(a) Gross income from sources without United States

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

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

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

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

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

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

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

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

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

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

(b) Taxable income from sources without United States

From the items of gross income specified in subsection (a) there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable

part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as taxable income from sources without the United States. In the case of an individual who does not itemize deductions, an amount equal to the standard deduction shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

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

Editorial Notes

AMENDMENTS

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

1989—Subsec. (a)(6). Pub. L. 101-239 substituted “865(i)(1)” for “865(h)(1)”.

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

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

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

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

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

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

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

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

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE OF 1989 AMENDMENT

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(12) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986,