

- (1) any employee of a controlled commercial entity (as defined in section 892(a)(2)(B)), or
- (2) any employee of a foreign government whose services are primarily in connection with a commercial activity (whether within or outside the United States) of the foreign government.

(Aug. 16, 1954, ch. 736, 68A Stat. 284; Pub. L. 100-647, title I, §1012(t)(4), Nov. 10, 1988, 102 Stat. 3527.)

Editorial Notes

AMENDMENTS

1988—Subsec. (c). Pub. L. 100-647 added subsec. (c).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

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

§ 894. Income affected by treaty

(a) Treaty provisions

(1) In general

The provisions of this title shall be applied to any taxpayer with due regard to any treaty obligation of the United States which applies to such taxpayer.

(2) Cross reference

For relationship between treaties and this title, see section 7852(d).

(b) Permanent establishment in United States

For purposes of applying any exemption from, or reduction of, any tax provided by any treaty to which the United States is a party with respect to income which is not effectively connected with the conduct of a trade or business within the United States, a nonresident alien individual or a foreign corporation shall be deemed not to have a permanent establishment in the United States at any time during the taxable year. This subsection shall not apply in respect of the tax computed under section 877(b).

(c) Denial of treaty benefits for certain payments through hybrid entities

(1) Application to certain payments

A foreign person shall not be entitled under any income tax treaty of the United States with a foreign country to any reduced rate of any withholding tax imposed by this title on an item of income derived through an entity which is treated as a partnership (or is otherwise treated as fiscally transparent) for purposes of this title if—

- (A) such item is not treated for purposes of the taxation laws of such foreign country as an item of income of such person,
- (B) the treaty does not contain a provision addressing the applicability of the treaty in the case of an item of income derived through a partnership, and
- (C) the foreign country does not impose tax on a distribution of such item of income from such entity to such person.

(2) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to determine the extent to which a taxpayer to which paragraph (1) does not apply shall not be entitled to benefits under any income tax treaty of the United States with respect to any payment received by, or income attributable to any activities of, an entity organized in any jurisdiction (including the United States) that is treated as a partnership or is otherwise treated as fiscally transparent for purposes of this title (including a common investment trust under section 584, a grantor trust, or an entity that is disregarded for purposes of this title) and is treated as fiscally nontransparent for purposes of the tax laws of the jurisdiction of residence of the taxpayer.

(Aug. 16, 1954, ch. 736, 68A Stat. 284; Pub. L. 89-809, title I, §105(a), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 100-647, title I, §1012(aa)(6), Nov. 10, 1988, 102 Stat. 3533; Pub. L. 105-34, title X, §1054(a), Aug. 5, 1997, 111 Stat. 943.)

Editorial Notes

AMENDMENTS

1997—Subsec. (c). Pub. L. 105-34 added subsec. (c).

1988—Subsec. (a). Pub. L. 100-647 substituted “Treaty provisions” for “Income affected by treaty” in heading and amended text generally. Prior to amendment, text read as follows: “Income of any kind, to the extent required by any treaty obligation of the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.”

1966—Pub. L. 89-809 designated existing provisions as subsec. (a), added subsec. (b), and substituted “affected by treaty” for “exempt under treaty” in section catchline.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title X, §1054(b), Aug. 5, 1997, 111 Stat. 944, provided that: “The amendments made by this section [amending this section] shall apply upon the date of enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1988 AMENDMENT

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

EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-809, title I, §105(d), Nov. 13, 1966, 80 Stat. 1565, provided that: “The amendments made by this section (other than subsections (d) and (f)) [amending this section and enacting section 896 of this title] shall apply with respect to taxable years beginning after December 31, 1966.”

§ 895. Income derived by a foreign central bank of issue from obligations of the United States or from bank deposits

Income derived by a foreign central bank of issue from obligations of the United States or of any agency or instrumentality thereof (including beneficial interests, participations, and other instruments issued under section 302(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717)) which are owned by