

**§ 904. Limitation on credit****(a) Limitation**

The total amount of the credit taken under section 901(a) shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources without the United States (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

**(b) Taxable income for purpose of computing limitation****(1) Personal exemptions**

For purposes of subsection (a), the taxable income in the case of an individual, estate, or trust shall be computed without any deduction for personal exemptions under section 151 or 642(b).

**(2) Capital gains**

For purposes of this section—

**(A) In general**

Taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only to the extent of foreign source capital gain net income.

**(B) Special rules where capital gain rate differential**

In the case of any taxable year for which there is a capital gain rate differential—

(i) in lieu of applying subparagraph (A), the taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only in an amount equal to foreign source capital gain net income reduced by the rate differential portion of foreign source net capital gain,

(ii) the entire taxable income shall include gain from the sale or exchange of capital assets only in an amount equal to capital gain net income reduced by the rate differential portion of net capital gain, and

(iii) for purposes of determining taxable income from sources outside the United States, any net capital loss (and any amount which is a short-term capital loss under section 1212(a)) from sources outside the United States to the extent taken into account in determining capital gain net income for the taxable year shall be reduced by an amount equal to the rate differential portion of the excess of net capital gain from sources within the United States over net capital gain.

**(C) Coordination with capital gains rates**

The Secretary may by regulations modify the application of this paragraph and paragraph (3) to the extent necessary to properly reflect any capital gain rate differential under section 1(h) and the computation of net capital gain.

**(3) Definitions**

For purposes of this subsection—

**(A) Foreign source capital gain net income**

The term “foreign source capital gain net income” means the lesser of—

- (i) capital gain net income from sources without the United States, or
- (ii) capital gain net income.

**(B) Foreign source net capital gain**

The term “foreign source net capital gain” means the lesser of—

- (i) net capital gain from sources without the United States, or
- (ii) net capital gain.

**(C) Section 1231 gains**

The term “gain from the sale or exchange of capital assets” includes any gain so treated under section 1231.

**(D) Capital gain rate differential**

There is a capital gain rate differential for any year if subsection (h) of section 1 applies to such taxable year.

**(E) Rate differential portion**

The rate differential portion of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as—

- (i) the excess of—
  - (I) the highest rate of tax set forth in subsection (a), (b), (c), (d), or (e) of section 1 (whichever applies), over
  - (II) the alternative rate of tax determined under section 1(h), bears to
- (ii) that rate referred to in subclause (I).

**(4) Treatment of dividends for which deduction is allowed under section 245A**

For purposes of subsection (a), in the case of a domestic corporation which is a United States shareholder with respect to a specified 10-percent owned foreign corporation, such shareholder's taxable income from sources without the United States (and entire taxable income) shall be determined without regard to—

(A) the foreign-source portion of any dividend received from such foreign corporation, and

(B) any deductions properly allocable or apportioned to—

(i) income (other than amounts includible under section 951(a)(1) or 951A(a)) with respect to stock of such specified 10-percent owned foreign corporation, or

(ii) such stock to the extent income with respect to such stock is other than amounts includible under section 951(a)(1) or 951A(a).

Any term which is used in section 245A and in this paragraph shall have the same meaning for purposes of this paragraph as when used in such section.

**(c) Carryback and carryover of excess tax paid**

Any amount by which all taxes paid or accrued to foreign countries or possessions of the United States for any taxable year for which the taxpayer chooses to have the benefits of this subpart exceed the limitation under subsection (a) shall be deemed taxes paid or accrued to foreign countries or possessions of the United

States in the first preceding taxable year and in any of the first 10 succeeding taxable years, in that order and to the extent not deemed taxes paid or accrued in a prior taxable year, in the amount by which the limitation under subsection (a) for such preceding or succeeding taxable year exceeds the sum of the taxes paid or accrued to foreign countries or possessions of the United States for such preceding or succeeding taxable year and the amount of the taxes for any taxable year earlier than the current taxable year which shall be deemed to have been paid or accrued in such preceding or subsequent taxable year (whether or not the taxpayer chooses to have the benefits of this subpart with respect to such earlier taxable year). Such amount deemed paid or accrued in any year may be availed of only as a tax credit and not as a deduction and only if the taxpayer for such year chooses to have the benefits of this subpart as to taxes paid or accrued for that year to foreign countries or possessions of the United States. This subsection shall not apply to taxes paid or accrued with respect to amounts described in subsection (d)(1)(A).

**(d) Separate application of section with respect to certain categories of income**

**(1) In general**

The provisions of subsections (a), (b), and (c) and sections 902,<sup>1</sup> 907, and 960 shall be applied separately with respect to—

- (A) any amount includible in gross income under section 951A (other than passive category income),
- (B) foreign branch income,
- (C) passive category income, and
- (D) general category income.

**(2) Definitions and special rules**

For purposes of this subsection—

**(A) Categories**

**(i) Passive category income**

The term “passive category income” means passive income and specified passive category income.

**(ii) General category income**

The term “general category income” means income other than income described in paragraph (1)(A), foreign branch income, and passive category income.

**(B) Passive income**

**(i) In general**

Except as otherwise provided in this subparagraph, the term “passive income” means any income received or accrued by any person which is of a kind which would be foreign personal holding company income (as defined in section 954(c)).

**(ii) Certain amounts included**

Except as provided in clause (iii), subparagraph (E)(ii), or paragraph (3)(H), the term “passive income” includes any amount includible in gross income under section 1293 (relating to certain passive foreign investment companies).

**(iii) Exceptions**

The term “passive income” shall not include—

- (I) any export financing interest, and
- (II) any high-taxed income.

**(iv) Clarification of application of section 864(d)(6)**

In determining whether any income is of a kind which would be foreign personal holding company income, the rules of section 864(d)(6) shall apply only in the case of income of a controlled foreign corporation.

**(v) Specified passive category income**

The term “specified passive category income” means—

- (I) dividends from a DISC or former DISC (as defined in section 992(a)) to the extent such dividends are treated as income from sources without the United States, and
- (II) distributions from a former FSC (as defined in section 922) out of earnings and profits attributable to foreign trade income (within the meaning of section 923(b)) or interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income (as defined in section 923(b)).

Any reference in subclause (II) to section 922, 923, or 927 shall be treated as a reference to such section as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.

**(C) Treatment of financial services income and companies**

**(i) In general**

Financial services income shall be treated as general category income in the case of—

- (I) a member of a financial services group, and
- (II) any other person if such person is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business.

**(ii) Financial services group**

The term “financial services group” means any affiliated group (as defined in section 1504(a) without regard to paragraphs (2) and (3) of section 1504(b)) which is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business. In determining whether such a group is so engaged, there shall be taken into account only the income of members of the group that are—

- (I) United States corporations, or
- (II) controlled foreign corporations in which such United States corporations own, directly or indirectly, at least 80 percent of the total voting power and value of the stock.

**(iii) Pass-thru entities**

The Secretary shall by regulation specify for purposes of this subparagraph the

<sup>1</sup> See References in Text note below.

treatment of financial services income received or accrued by partnerships and by other pass-thru entities which are not members of a financial services group.

**(D) Financial services income**

**(i) In general**

Except as otherwise provided in this subparagraph, the term “financial services income” means any income which is received or accrued by any person predominantly engaged in the active conduct of a banking, insurance, financing, or similar business, and which is—

(I) described in clause (ii), or

(II) passive income (determined without regard to subparagraph (B)(iii)(II)).

**(ii) General description of financial services income**

Income is described in this clause if such income is—

(I) derived in the active conduct of a banking, financing, or similar business,

(II) derived from the investment by an insurance company of its unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business, or

(III) of a kind which would be insurance income as defined in section 953(a) determined without regard to those provisions of paragraph (1)(A) of such section which limit insurance income to income from countries other than the country in which the corporation was created or organized.

**(E) Noncontrolled section 902 corporation**

**(i) Noncontrolled 10-percent owned foreign corporation**

The term “noncontrolled 10-percent owned foreign corporation” means any foreign corporation which is—

(I) a specified 10-percent owned foreign corporation (as defined in section 245A(b)), or

(II) a passive foreign investment company (as defined in section 1297(a)) with respect to which the taxpayer meets the stock ownership requirements of section 902(a) (or, for purposes of applying paragraphs (3) and (4), the requirements of section 902(b)).

A controlled foreign corporation shall not be treated as a noncontrolled 10-percent owned foreign corporation with respect to any distribution out of its earnings and profits for periods during which it was a controlled foreign corporation. Any reference to section 902 in this clause shall be treated as a reference to such section as in effect before its repeal.

**(ii) Treatment of inclusions under section 1293**

If any foreign corporation is a noncontrolled 10-percent owned foreign corporation with respect to the taxpayer, any inclusion under section 1293 with respect to such corporation shall be treated as a dividend from such corporation.

**(F) High-taxed income**

The term “high-taxed income” means any income which (but for this subparagraph) would be passive income if the sum of—

(i) the foreign income taxes paid or accrued by the taxpayer with respect to such income, and

(ii) the foreign income taxes deemed paid by the taxpayer with respect to such income under section 902<sup>1</sup> or 960,

exceeds the highest rate of tax specified in section 1 or 11 (whichever applies) multiplied by the amount of such income (determined with regard to section 78). For purposes of the preceding sentence, the term “foreign income taxes” means any income, war profits, or excess profits tax imposed by any foreign country or possession of the United States.

**(G) Export financing interest**

For purposes of this paragraph, the term “export financing interest” means any interest derived from financing the sale (or other disposition) for use or consumption outside the United States of any property—

(i) which is manufactured, produced, grown, or extracted in the United States by the taxpayer or a related person, and

(ii) not more than 50 percent of the fair market value of which is attributable to products imported into the United States.

For purposes of clause (ii), the fair market value of any property imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation.

**(H) Treatment of income tax base differences**

**(i) In general**

In the case of taxable years beginning after December 31, 2006, tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles shall be treated as imposed on income described in paragraph (1)(B).

**(ii) Special rule for years before 2007**

**(I) In general**

In the case of taxes paid or accrued in taxable years beginning after December 31, 2004, and before January 1, 2007, a taxpayer may elect to treat tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles as tax imposed on income described in subparagraph (C) or (I) of paragraph (1).

**(II) Election irrevocable**

Any such election shall apply to the taxable year for which made and all subsequent taxable years described in subclause (I) unless revoked with the consent of the Secretary.

**(I) Related person**

For purposes of this paragraph, the term “related person” has the meaning given such

term by section 954(d)(3), except that such section shall be applied by substituting “the person with respect to whom the determination is being made” for “controlled foreign corporation” each place it appears.

**(J) Foreign branch income**

**(i) In general**

The term “foreign branch income” means the business profits of such United States person which are attributable to 1 or more qualified business units (as defined in section 989(a)) in 1 or more foreign countries. For purposes of the preceding sentence, the amount of business profits attributable to a qualified business unit shall be determined under rules established by the Secretary.

**(ii) Exception**

Such term shall not include any income which is passive category income.

**(K) Transitional rules for 2007 changes**

For purposes of paragraph (1)—

(i) taxes carried from any taxable year beginning before January 1, 2007, to any taxable year beginning on or after such date, with respect to any item of income, shall be treated as described in the subparagraph of paragraph (1) in which such income would be described were such taxes paid or accrued in a taxable year beginning on or after such date, and

(ii) the Secretary may by regulations provide for the allocation of any carryback of taxes with respect to income from a taxable year beginning on or after January 1, 2007, to a taxable year beginning before such date for purposes of allocating such income among the separate categories in effect for the taxable year to which carried.

**(3) Look-thru in case of controlled foreign corporations**

**(A) In general**

Except as otherwise provided in this paragraph, dividends, interest, rents, and royalties received or accrued by the taxpayer from a controlled foreign corporation in which the taxpayer is a United States shareholder shall not be treated as passive category income.

**(B) Subpart F inclusions**

Any amount included in gross income under section 951(a)(1)(A) shall be treated as passive category income to the extent the amount so included is attributable to passive category income.

**(C) Interest, rents, and royalties**

Any interest, rent, or royalty which is received or accrued from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as passive category income to the extent it is properly allocable (under regulations prescribed by the Secretary) to passive category income of the controlled foreign corporation.

**(D) Dividends**

Any dividend paid out of the earnings and profits of any controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as passive category income in proportion to the ratio of—

(i) the portion of the earnings and profits attributable to passive category income, to

(ii) the total amount of earnings and profits.

**(E) Look-thru applies only where subpart F applies**

If a controlled foreign corporation meets the requirements of section 954(b)(3)(A) (relating to de minimis rule) for any taxable year, for purposes of this paragraph, none of its foreign base company income (as defined in section 954(a) without regard to section 954(b)(5)) and none of its gross insurance income (as defined in section 954(b)(3)(C)) for such taxable year shall be treated as passive category income, except that this sentence shall not apply to any income which (without regard to this sentence) would be treated as financial services income. Solely for purposes of applying subparagraph (D), passive income of a controlled foreign corporation shall not be treated as passive category income if the requirements of section 954(b)(4) are met with respect to such income.

**(F) Coordination with high-taxed income provisions**

(i) In determining whether any income of a controlled foreign corporation is passive category income, subclause (II) of paragraph (2)(B)(iii) shall not apply.

(ii) Any income of the taxpayer which is treated as passive category income under this paragraph shall be so treated notwithstanding any provision of paragraph (2); except that the determination of whether any amount is high-taxed income shall be made after the application of this paragraph.

**(G) Dividend**

For purposes of this paragraph, the term “dividend” includes any amount included in gross income in section 951(a)(1)(B). Any amount included in gross income under section 78 to the extent attributable to amounts included in gross income in section 951(a)(1)(A) shall not be treated as a dividend but shall be treated as included in gross income under section 951(a)(1)(A).

**(H) Look-thru applies to passive foreign investment company inclusion**

If—

(i) a passive foreign investment company is a controlled foreign corporation, and

(ii) the taxpayer is a United States shareholder in such controlled foreign corporation,

any amount included in gross income under section 1293 shall be treated as income in a separate category to the extent such amount is attributable to income in such category.

**(4) Look-thru applies to dividends from non-controlled 10-percent owned foreign corporations**

**(A) In general**

For purposes of this subsection, any dividend from a noncontrolled 10-percent owned foreign corporation with respect to the taxpayer shall be treated as income described in a subparagraph of paragraph (1) in proportion to the ratio of—

- (i) the portion of earnings and profits attributable to income described in such subparagraph, to
- (ii) the total amount of earnings and profits.

**(B) Earnings and profits of controlled foreign corporations**

In the case of any distribution from a controlled foreign corporation to a United States shareholder, rules similar to the rules of subparagraph (A) shall apply in determining the extent to which earnings and profits of the controlled foreign corporation which are attributable to dividends received from a noncontrolled 10-percent owned foreign corporation may be treated as income in a separate category.

**(C) Special rules**

For purposes of this paragraph—

**(i) Earnings and profits**

**(I) In general**

The rules of section 316 shall apply.

**(II) Regulations**

The Secretary may prescribe regulations regarding the treatment of distributions out of earnings and profits for periods before the taxpayer's acquisition of the stock to which the distributions relate.

**(ii) Inadequate substantiation**

If the Secretary determines that the proper subparagraph of paragraph (1) in which a dividend is described has not been substantiated, such dividend shall be treated as income described in paragraph (1)(A).

**(iii) Coordination with high-taxed income provisions**

Rules similar to the rules of paragraph (3)(F) shall apply for purposes of this paragraph.

**(iv) Look-thru with respect to carryover of credit**

Rules similar to subparagraph (A) also shall apply to any carryforward under subsection (c) from a taxable year beginning before January 1, 2003, of tax allocable to a dividend from a noncontrolled 10-percent owned foreign corporation with respect to the taxpayer. The Secretary may by regulations provide for the allocation of any carryback of tax allocable to a dividend from a noncontrolled 10-percent owned foreign corporation from a taxable year beginning on or after January 1, 2003, to a

taxable year beginning before such date for purposes of allocating such dividend among the separate categories in effect for the taxable year to which carried.

**(5) Controlled foreign corporation; United States shareholder**

For purposes of this subsection—

**(A) Controlled foreign corporation**

The term “controlled foreign corporation” has the meaning given such term by section 957 (taking into account section 953(c)).

**(B) United States shareholder**

The term “United States shareholder” has the meaning given such term by section 951(b) (taking into account section 953(c)).

**(6) Separate application to items resourced under treaties**

**(A) In general**

If—

- (i) without regard to any treaty obligation of the United States, any item of income would be treated as derived from sources within the United States,
- (ii) under a treaty obligation of the United States, such item would be treated as arising from sources outside the United States, and
- (iii) the taxpayer chooses the benefits of such treaty obligation,

subsections (a), (b), and (c) of this section and sections 907 and 960 shall be applied separately with respect to each such item.

**(B) Coordination with other provisions**

This paragraph shall not apply to any item of income to which subsection (h)(10) or section 865(h) applies.

**(C) Regulations**

The Secretary may issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this paragraph, including regulations or other guidance which provides that related items of income may be aggregated for purposes of this paragraph.

**(7) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate for the purposes of this subsection, including regulations—

- (A) for the application of paragraph (3) and subsection (f)(5) in the case of income paid (or loans made) through 1 or more entities or between 2 or more chains of entities,
- (B) preventing the manipulation of the character of income the effect of which is to avoid the purposes of this subsection, and
- (C) providing that rules similar to the rules of paragraph (3)(C) shall apply to interest, rents, and royalties received or accrued from entities which would be controlled foreign corporations if they were foreign corporations.

**[(e) Repealed. Pub. L. 101-508, title XI, § 11801(a)(31), Nov. 5, 1990, 104 Stat. 1388-521]**

**(f) Recapture of overall foreign loss**

**(1) General rule**

For purposes of this subpart, in the case of any taxpayer who sustains an overall foreign loss for any taxable year, that portion of the taxpayer's taxable income from sources without the United States for each succeeding taxable year which is equal to the lesser of—

(A) the amount of such loss (to the extent not used under this paragraph in prior taxable years), or

(B) 50 percent (or such larger percent as the taxpayer may choose) of the taxpayer's taxable income from sources without the United States for such succeeding taxable year,

shall be treated as income from sources within the United States (and not as income from sources without the United States).

**(2) Overall foreign loss defined**

For purposes of this subsection, the term "overall foreign loss" means the amount by which the gross income for the taxable year from sources without the United States (whether or not the taxpayer chooses the benefits of this subpart for such taxable year) for such year is exceeded by the sum of the deductions properly apportioned or allocated thereto, except that there shall not be taken into account—

(A) any net operating loss deduction allowable for such year under section 172(a), and

(B) any—

(i) foreign expropriation loss for such year, as defined in section 172(h) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990), or

(ii) loss for such year which arises from fire, storm, shipwreck, or other casualty, or from theft,

to the extent such loss is not compensated for by insurance or otherwise.

**(3) Dispositions**

**(A) In general**

For purposes of this chapter, if property which has been used predominantly without the United States in a trade or business is disposed of during any taxable year—

(i) the taxpayer, notwithstanding any other provision of this chapter (other than paragraph (1)), shall be deemed to have received and recognized taxable income from sources without the United States in the taxable year of the disposition, by reason of such disposition, in an amount equal to the lesser of the excess of the fair market value of such property over the taxpayer's adjusted basis in such property or the remaining amount of the overall foreign losses which were not used under paragraph (1) for such taxable year or any prior taxable year, and

(ii) paragraph (1) shall be applied with respect to such income by substituting "100 percent" for "50 percent".

In determining for purposes of this subparagraph whether the predominant use of any property has been without the United States, there shall be taken into account use during the 3-year period ending on the date of the disposition (or, if shorter, the period during which the property has been used in the trade or business).

**(B) Disposition defined and special rules**

(i) For purposes of this subsection, the term "disposition" includes a sale, exchange, distribution, or gift of property whether or not gain or loss is recognized on the transfer.

(ii) Any taxable income recognized solely by reason of subparagraph (A) shall have the same characterization it would have had if the taxpayer had sold or exchanged the property.

(iii) The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect taxable income recognized solely by reason of subparagraph (A).

**(C) Exceptions**

Notwithstanding subparagraph (B), the term "disposition" does not include—

(i) a disposition of property which is not a material factor in the realization of income by the taxpayer, or

(ii) a disposition of property to a domestic corporation in a distribution or transfer described in section 381(a).

**(D) Application to certain dispositions of stock in controlled foreign corporation**

**(i) In general**

This paragraph shall apply to an applicable disposition in the same manner as if it were a disposition of property described in subparagraph (A), except that the exception contained in subparagraph (C)(i) shall not apply.

**(ii) Applicable disposition**

For purposes of clause (i), the term "applicable disposition" means any disposition of any share of stock in a controlled foreign corporation in a transaction or series of transactions if, immediately before such transaction or series of transactions, the taxpayer owned more than 50 percent (by vote or value) of the stock of the controlled foreign corporation. Such term shall not include a disposition described in clause (iii) or (iv), except that clause (i) shall apply to any gain recognized on any such disposition.

**(iii) Exception for certain exchanges where ownership percentage retained**

A disposition shall not be treated as an applicable disposition under clause (ii) if it is part of a transaction or series of transactions—

(I) to which section 351 or 721 applies, or under which the transferor receives stock in a foreign corporation in exchange for the stock in the controlled foreign corporation and the stock re-

ceived is exchanged basis property (as defined in section 7701(a)(44)), and

(II) immediately after which, the transferor owns (by vote or value) at least the same percentage of stock in the controlled foreign corporation (or, if the controlled foreign corporation is not in existence after such transaction or series of transactions, in another foreign corporation stock in<sup>2</sup> which was received by the transferor in exchange for stock in the controlled foreign corporation) as the percentage of stock in the controlled foreign corporation which the taxpayer owned immediately before such transaction or series of transactions.

**(iv) Exception for certain asset acquisitions**

A disposition shall not be treated as an applicable disposition under clause (ii) if it is part of a transaction or series of transactions in which the taxpayer (or any member of an affiliated group of corporations filing a consolidated return under section 1501 which includes the taxpayer) acquires the assets of a controlled foreign corporation in exchange for the shares of the controlled foreign corporation in a liquidation described in section 332 or a reorganization described in section 368(a)(1).

**(v) Controlled foreign corporation**

For purposes of this subparagraph, the term “controlled foreign corporation” has the meaning given such term by section 957.

**(vi) Stock ownership**

For purposes of this subparagraph, ownership of stock shall be determined under the rules of subsections (a) and (b) of section 958.

**(4) Accumulation distributions of foreign trust**

For purposes of this chapter, in the case of amounts of income from sources without the United States which are treated under section 666 (without regard to subsections (b) and (c) thereof if the taxpayer chose to take a deduction with respect to the amounts described in such subsections under section 667(d)(1)(B)) as having been distributed by a foreign trust in a preceding taxable year, that portion of such amounts equal to the amount of any overall foreign loss sustained by the beneficiary in a year prior to the taxable year of the beneficiary in which such distribution is received from the trust shall be treated as income from sources within the United States (and not income from sources without the United States) to the extent that such loss was not used under this subsection in prior taxable years, or in the current taxable year, against other income of the beneficiary.

**(5) Treatment of separate limitation losses**

**(A) In general**

The amount of the separate limitation losses for any taxable year shall reduce income from sources within the United States

for such taxable year only to the extent the aggregate amount of such losses exceeds the aggregate amount of the separate limitation incomes for such taxable year.

**(B) Allocation of losses**

The separate limitation losses for any taxable year (to the extent such losses do not exceed the separate limitation incomes for such year) shall be allocated among (and operate to reduce) such incomes on a proportionate basis.

**(C) Recharacterization of subsequent income**

If—

(i) a separate limitation loss from any income category (hereinafter in this subparagraph referred to as “the loss category”) was allocated to income from any other category under subparagraph (B), and

(ii) the loss category has income for a subsequent taxable year,

such income (to the extent it does not exceed the aggregate separate limitation losses from the loss category not previously recharacterized under this subparagraph) shall be recharacterized as income from such other category in proportion to the prior reductions under subparagraph (B) in such other category not previously taken into account under this subparagraph. Nothing in the preceding sentence shall be construed as recharacterizing any tax.

**(D) Special rules for losses from sources in the United States**

Any loss from sources in the United States for any taxable year (to the extent such loss does not exceed the separate limitation incomes from such year) shall be allocated among (and operate to reduce) such incomes on a proportionate basis. This subparagraph shall be applied after subparagraph (B).

**(E) Definitions**

For purposes of this paragraph—

**(i) Income category**

The term “income category” means each separate category of income described in subsection (d)(1).

**(ii) Separate limitation income**

The term “separate limitation income” means, with respect to any income category, the taxable income from sources outside the United States, separately computed for such category.

**(iii) Separate limitation loss**

The term “separate limitation loss” means, with respect to any income category, the loss from such category determined under the principles of section 907(c)(4)(B).

**(F) Dispositions**

If any separate limitation loss for any taxable year is allocated against any separate limitation income for such taxable year, except to the extent provided in regulations, rules similar to the rules of paragraph (3)

<sup>2</sup> So in original.

shall apply to any disposition of property if gain from such disposition would be in the income category with respect to which there was such separate limitation loss.

**(g) Recharacterization of overall domestic loss**

**(1) General rule**

For purposes of this subpart and section 936,<sup>1</sup> in the case of any taxpayer who sustains an overall domestic loss for any taxable year beginning after December 31, 2006, that portion of the taxpayer's taxable income from sources within the United States for each succeeding taxable year which is equal to the lesser of—

(A) the amount of such loss (to the extent not used under this paragraph in prior taxable years), or

(B) 50 percent of the taxpayer's taxable income from sources within the United States for such succeeding taxable year,

shall be treated as income from sources without the United States (and not as income from sources within the United States).

**(2) Overall domestic loss**

For purposes of this subsection—

**(A) In general**

The term “overall domestic loss” means—

(i) with respect to any qualified taxable year, the domestic loss for such taxable year to the extent such loss offsets taxable income from sources without the United States for the taxable year or for any preceding qualified taxable year by reason of a carryback, and

(ii) with respect to any other taxable year, the domestic loss for such taxable year to the extent such loss offsets taxable income from sources without the United States for any preceding qualified taxable year by reason of a carryback.

**(B) Domestic loss**

For purposes of subparagraph (A), the term “domestic loss” means the amount by which the gross income for the taxable year from sources within the United States is exceeded by the sum of the deductions properly apportioned or allocated thereto (determined without regard to any carryback from a subsequent taxable year).

**(C) Qualified taxable year**

For purposes of subparagraph (A), the term “qualified taxable year” means any taxable year for which the taxpayer chose the benefits of this subpart.

**(3) Characterization of subsequent income**

**(A) In general**

Any income from sources within the United States that is treated as income from sources without the United States under paragraph (1) shall be allocated among and increase the income categories in proportion to the loss from sources within the United States previously allocated to those income categories.

**(B) Income category**

For purposes of this paragraph, the term “income category” has the meaning given such term by subsection (f)(5)(E)(i).

**(4) Coordination with subsection (f)**

The Secretary shall prescribe such regulations as may be necessary to coordinate the provisions of this subsection with the provisions of subsection (f).

**(5) Election to increase percentage of taxable income treated as foreign source**

**(A) In general**

If any pre-2018 unused overall domestic loss is taken into account under paragraph (1) for any applicable taxable year, the taxpayer may elect to have such paragraph applied to such loss by substituting a percentage greater than 50 percent (but not greater than 100 percent) for 50 percent in subparagraph (B) thereof.

**(B) Pre-2018 unused overall domestic loss**

For purposes of this paragraph, the term “pre-2018 unused overall domestic loss” means any overall domestic loss which—

(i) arises in a qualified taxable year beginning before January 1, 2018, and

(ii) has not been used under paragraph (1) for any taxable year beginning before such date.

**(C) Applicable taxable year**

For purposes of this paragraph, the term “applicable taxable year” means any taxable year of the taxpayer beginning after December 31, 2017, and before January 1, 2028.

**(h) Source rules in case of United States-owned foreign corporations**

**(1) In general**

The following amounts which are derived from a United States-owned foreign corporation and which would be treated as derived from sources outside the United States without regard to this subsection shall, for purposes of this section, be treated as derived from sources within the United States to the extent provided in this subsection:

(A) Any amount included in gross income under—

(i) section 951(a) (relating to amounts included in gross income of United States shareholders), or

(ii) section 1293 (relating to current taxation of income from qualified funds).

(B) Interest.

(C) Dividends.

**(2) Subpart F and passive foreign investment company inclusions**

Any amount described in subparagraph (A) of paragraph (1) shall be treated as derived from sources within the United States to the extent such amount is attributable to income of the United States-owned foreign corporation from sources within the United States.

**(3) Certain interest allocable to United States source income**

Any interest which—

(A) is paid or accrued by a United States-owned foreign corporation during any taxable year,

(B) is paid or accrued to a United States shareholder (as defined in section 951(b)) or a



related person (within the meaning of section 267(b)) to such a shareholder, and

(C) is properly allocable (under regulations prescribed by the Secretary) to income of such foreign corporation for the taxable year from sources within the United States,

shall be treated as derived from sources within the United States.

#### **(4) Dividends**

##### **(A) In general**

The United States source ratio of any dividend paid or accrued by a United States-owned foreign corporation shall be treated as derived from sources within the United States.

##### **(B) United States source ratio**

For purposes of subparagraph (A), the term “United States source ratio” means, with respect to any dividend paid out of the earnings and profits for any taxable year, a fraction—

(i) the numerator of which is the portion of the earnings and profits for such taxable year from sources within the United States, and

(ii) the denominator of which is the total amount of earnings and profits for such taxable year.

#### **(5) Exception where United States-owned foreign corporation has small amount of United States source income**

Paragraph (3) shall not apply to interest paid or accrued during any taxable year (and paragraph (4) shall not apply to any dividends paid out of the earnings and profits for such taxable year) if—

(A) the United States-owned foreign corporation has earnings and profits for such taxable year, and

(B) less than 10 percent of such earnings and profits is attributable to sources within the United States.

For purposes of the preceding sentence, earnings and profits shall be determined without any reduction for interest described in paragraph (3) (determined without regard to subparagraph (C) thereof).

#### **(6) United States-owned foreign corporation**

For purposes of this subsection, the term “United States-owned foreign corporation” means any foreign corporation if 50 percent or more of—

(A) the total combined voting power of all classes of stock of such corporation entitled to vote, or

(B) the total value of the stock of such corporation,

is held directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) by United States persons (as defined in section 7701(a)(30)).

#### **(7) Dividend**

For purposes of this subsection, the term “dividend” includes any gain treated as a dividend under section 1248.

#### **(8) Coordination with subsection (f)**

This subsection shall be applied before subsection (f).

#### **(9) Treatment of certain domestic corporations**

In the case of any dividend treated as not from sources within the United States under section 861(a)(2)(A), the corporation paying such dividend shall be treated for purposes of this subsection as a United States-owned foreign corporation.

#### **(10) Coordination with treaties**

##### **(A) In general**

If—

(i) any amount derived from a United States-owned foreign corporation would be treated as derived from sources within the United States under this subsection by reason of an item of income of such United States-owned foreign corporation,

(ii) under a treaty obligation of the United States (applied without regard to this subsection and by treating any amount included in gross income under section 951(a)(1) as a dividend), such amount would be treated as arising from sources outside the United States, and

(iii) the taxpayer chooses the benefits of this paragraph,

this subsection shall not apply to such amount to the extent attributable to such item of income (but subsections (a), (b), and (c) of this section and sections 907 and 960 shall be applied separately with respect to such amount to the extent so attributable).

##### **(B) Special rule**

Amounts included in gross income under section 951(a)(1) shall be treated as a dividend under subparagraph (A)(ii) only if dividends paid by each corporation (the stock in which is taken into account in determining whether the shareholder is a United States shareholder in the United States-owned foreign corporation), if paid to the United States shareholder, would be treated under a treaty obligation of the United States as arising from sources outside the United States (applied without regard to this subsection).

#### **(11) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate for purposes of this subsection, including—

(A) regulations for the application of this subsection in the case of interest or dividend payments through 1 or more entities, and

(B) regulations providing that this subsection shall apply to interest paid or accrued to any person (whether or not a United States shareholder).

#### **(i) Limitation on use of deconsolidation to avoid foreign tax credit limitations**

If 2 or more domestic corporations would be members of the same affiliated group if—

(1) section 1504(b) were applied without regard to the exceptions contained therein, and

(2) the constructive ownership rules of section 1563(e) applied for purposes of section 1504(a),

the Secretary may by regulations provide for resourcing the income of any of such corporations or for modifications to the consolidated return regulations to the extent that such resourcing or modifications are necessary to prevent the avoidance of the provisions of this subpart.

**(j) Certain individuals exempt**

**(1) In general**

In the case of an individual to whom this subsection applies for any taxable year—

(A) the limitation of subsection (a) shall not apply,

(B) no taxes paid or accrued by the individual during such taxable year may be deemed paid or accrued under subsection (c) in any other taxable year, and

(C) no taxes paid or accrued by the individual during any other taxable year may be deemed paid or accrued under subsection (c) in such taxable year.

**(2) Individuals to whom subsection applies**

This subsection shall apply to an individual for any taxable year if—

(A) the entire amount of such individual's gross income for the taxable year from sources without the United States consists of qualified passive income,

(B) the amount of the creditable foreign taxes paid or accrued by the individual during the taxable year does not exceed \$300 (\$600 in the case of a joint return), and

(C) such individual elects to have this subsection apply for the taxable year.

**(3) Definitions**

For purposes of this subsection—

**(A) Qualified passive income**

The term “qualified passive income” means any item of gross income if—

(i) such item of income is passive income (as defined in subsection (d)(2)(B) without regard to clause (iii) thereof), and

(ii) such item of income is shown on a payee statement furnished to the individual.

**(B) Creditable foreign taxes**

The term “creditable foreign taxes” means any taxes for which a credit is allowable under section 901; except that such term shall not include any tax unless such tax is shown on a payee statement furnished to such individual.

**(C) Payee statement**

The term “payee statement” has the meaning given to such term by section 6724(d)(2).

**(D) Estates and trusts not eligible**

This subsection shall not apply to any estate or trust.

**(k) Cross references**

For increase of limitation under subsection (a) for taxes paid with respect to amounts received which were included in the gross income of the taxpayer for a prior taxable year as a United States shareholder with respect to a controlled foreign corporation, see section 960(c).

(Aug. 16, 1954, ch. 736, 68A Stat. 287; Pub. L. 85-866, title I, § 42(a), Sept. 2, 1958, 72 Stat. 1639; Pub. L. 86-780, § 1, Sept. 14, 1960, 74 Stat. 1010; Pub. L. 87-834, §§ 10(a), 12(b)(2), Oct. 16, 1962, 76 Stat. 1002, 1031; Pub. L. 88-272, title II, § 234(b)(6), Feb. 26, 1964, 78 Stat. 116; Pub. L. 89-809, title I, § 106(c)(1), Nov. 13, 1966, 80 Stat. 1570; Pub. L. 91-172, title V, § 506(b), Dec. 30, 1969, 83 Stat. 635; Pub. L. 92-178, title V, § 502(b)(2)-(4), Dec. 10, 1971, 85 Stat. 549; Pub. L. 94-455, title V, § 503(b)(1), title X, §§ 1031(a), 1032(a), 1034(a), 1051(e), title XIX, § 1901(b)(10)(B), Oct. 4, 1976, 90 Stat. 1562, 1620, 1624, 1629, 1646, 1795; Pub. L. 95-30, title I, § 102(b)(11), May 23, 1977, 91 Stat. 138; Pub. L. 95-600, title IV, §§ 403(c)(4), 421(e)(6), title VII, § 701(q)(2), (u)(2)(A)-(C), (3)(A), (4)(A), (B), (8)(C), Nov. 6, 1978, 92 Stat. 2868, 2876, 2910, 2913, 2916; Pub. L. 96-222, title I, § 104(a)(3)(D), Apr. 1, 1980, 94 Stat. 215; Pub. L. 97-248, title II, § 211(c)(2), Sept. 3, 1982, 96 Stat. 449; Pub. L. 98-21, title I, § 122(c)(1), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98-369, div. A, title I, §§ 121(a), 122(a), title IV, § 474(r)(21), title VIII, § 801(d)(2), July 18, 1984, 98 Stat. 638, 643, 843, 995; Pub. L. 99-514, title I, § 104(b)(13), title VII, § 701(e)(4)(H), title XII, §§ 1201(a), (b), (d)(1)-(3), 1203(a), 1211(b)(3), 1235(f)(4), title XVIII, §§ 1810(a)(1)(A), (b)(1)-(4)(A), 1876(d)(2), 1899A(24), Oct. 22, 1986, 100 Stat. 2105, 2343, 2520, 2525, 2531, 2536, 2575, 2821, 2823, 2899, 2959; Pub. L. 100-647, title I, §§ 1003(b)(2), 1012(a)(1)(A), (2)-(4), (6)-(11), (c), (p)(11), (29), (q)(12), (bb)(4)(A), title II, § 2004(7), Nov. 10, 1988, 102 Stat. 3383, 3493-3497, 3517, 3521, 3525, 3534, 3606; Pub. L. 101-239, title VII, §§ 7402(a), 7811(i)(1), Dec. 19, 1989, 103 Stat. 2357, 2409; Pub. L. 101-508, title XI, §§ 11101(d)(5), 11801(a)(31), Nov. 5, 1990, 104 Stat. 1388-405, 1388-521; Pub. L. 103-66, title XIII, §§ 13227(d), 13235(a)(2), Aug. 10, 1993, 107 Stat. 494, 504; Pub. L. 104-188, title I, §§ 1501(b)(1), (12), 1703(i)(1), 1704(t)(36), Aug. 20, 1996, 110 Stat. 1825, 1826, 1876, 1889; Pub. L. 105-34, title III, § 311(c)(3), title XI, §§ 1101(a), 1105(a), (b), 1111(b), 1163(b), Aug. 5, 1997, 111 Stat. 835, 963, 967, 969, 987; Pub. L. 106-170, title V, § 501(b)(2), Dec. 17, 1999, 113 Stat. 1919; Pub. L. 107-16, title II, §§ 201(b)(2)(G), 202(f)(2)(C), title VI, § 618(b)(2)(D), June 7, 2001, 115 Stat. 46, 49, 108; Pub. L. 107-147, title IV, § 417(23)(B), title VI, § 601(b)(1), Mar. 9, 2002, 116 Stat. 57, 59; Pub. L. 108-311, title III, § 312(b)(1), Oct. 4, 2004, 118 Stat. 1181; Pub. L. 108-357, title IV, §§ 402(a), 403(a)-(b)(5), 404(a)-(f), 413(c)(14), (15), 417(a), title VIII, § 895(a), Oct. 22, 2004, 118 Stat. 1491-1495, 1508, 1512, 1647; Pub. L. 109-135, title IV, §§ 402(i)(3)(G), 403(k), (o), Dec. 21, 2005, 119 Stat. 2614, 2625, 2626; Pub. L. 110-172, § 11(f)(3), (g)(10), Dec. 29, 2007, 121 Stat. 2489, 2490; Pub. L. 111-5, div. B, title I, §§ 1004(b)(5), 1142(b)(1)(E), 1144(b)(1)(E), Feb. 17, 2009, 123 Stat. 314, 330, 332; Pub. L. 111-148, title X, § 10909(b)(2)(K), (c), Mar. 23, 2010, 124 Stat. 1023; Pub. L. 111-226, title II, §§ 213(a), 217(c)(2), Aug. 10, 2010, 124 Stat. 2398, 2402; Pub. L. 111-312, title I, § 101(b)(1), Dec. 17, 2010, 124 Stat. 3298; Pub. L. 112-240, title I, § 104(c)(2)(K), Jan. 2, 2013, 126 Stat. 2322; Pub. L. 113-295, div. A, title II, §§ 219(c), 221(a)(72), Dec. 19, 2014, 128 Stat. 4035, 4049; Pub. L. 115-97, title I, §§ 13001(b)(2)(M), 14101(d), 14201(b)(2), 14301(c)(15)-(19), 14302(a), (b), 14304(a), Dec. 22, 2017, 131 Stat. 2097, 2191, 2212, 2223, 2225; Pub. L. 115-141, div. U, title IV, § 401(a)(157),

(d)(1)(D)(xiii), (xiv), Mar. 23, 2018, 132 Stat. 1191, 1208.)

### Editorial Notes

#### REFERENCES IN TEXT

Section 902, referred to in subsec. (d)(1), (2)(E)(i), (F)(ii), was repealed by Pub. L. 115-97, title I, §14301(a), (d), Dec. 22, 2017, 131 Stat. 2221, 2225, applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (d)(2)(B)(v), is Pub. L. 106-519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

Section 172(h), referred to in subsec. (f)(2)(B)(i), was repealed by Pub. L. 101-508, title XI, §1181(b)(1), Nov. 5, 1990, 104 Stat. 1388-532.

The date of the enactment of the Revenue Reconciliation Act of 1990, referred to in subsec. (f)(2)(B)(i), is the date of enactment of Pub. L. 101-508, title XI, which was approved Nov. 5, 1990.

Section 936, referred to in subsec. (g)(1), was repealed by Pub. L. 115-141, div. U, title IV, §401(d)(1)(C), Mar. 23, 2018, 132 Stat. 1206.

#### AMENDMENTS

2018—Subsec. (b)(4), (5). Pub. L. 115-141, §401(d)(1)(D)(xiii), redesignated par. (5) as (4) and struck out former par. (4). Prior to amendment, text of par. (4) read as follows: “For purposes of subsection (a), in the case of a corporation, the taxable income shall not include any portion thereof taken into account for purposes of the credit (if any) allowed by section 936 (without regard to subsections (a)(4) and (i) thereof).”

Subsec. (d)(2)(B)(ii). Pub. L. 115-141, §401(a)(157), inserted “subparagraph (E)(ii), or paragraph (3)(H),” after “Except as provided in clause (iii),” and struck out “, except as provided in subparagraph (E)(iii) or paragraph (3)(I),” after “includes.”

Subsec. (f)(1). Pub. L. 115-141, §401(d)(1)(D)(xiv), struck out “and section 936” after “subpart” in introductory provisions.

2017—Subsec. (b)(2)(C). Pub. L. 115-97, §13001(b)(2)(M)(i), struck out “or 1201(a)” after “under section 1(h).”

Subsec. (b)(3)(D). Pub. L. 115-97, §13001(b)(2)(M)(ii), added subpar. (D) and struck out former subpar. (D). Prior to amendment, text read as follows: “There is a capital gain rate differential for any taxable year if—

“(i) in the case of a taxpayer other than a corporation, subsection (h) of section 1 applies to such taxable year, or

“(ii) in the case of a corporation, any rate of tax imposed by section 11, 511, or 831(a) or (b) (whichever applies) exceeds the alternative rate of tax under section 1201(a) (determined without regard to the last sentence of section 11(b)(1)).”

Subsec. (b)(3)(E). Pub. L. 115-97, §13001(b)(2)(M)(iii), added subpar. (E) and struck out former subpar. (E) which related to rate differential portion for corporations and taxpayers other than corporations.

Subsec. (b)(5). Pub. L. 115-97, §14101(d), added par. (5).

Subsec. (c). Pub. L. 115-97, §14201(b)(2)(C), inserted at end “This subsection shall not apply to taxes paid or accrued with respect to amounts described in subsection (d)(1)(A).”

Subsec. (d)(1)(A). Pub. L. 115-97, §14201(b)(2)(A), added subpar. (A). Former subpar. (A) redesignated (B), then (C).

Subsec. (d)(1)(B). Pub. L. 115-97, §14302(a), added subpar. (B). Former subpar. (B) redesignated (C), then (D).

Pub. L. 115-97, §14201(b)(2)(A), redesignated subpar. (A) as (B). Former subpar. (B) redesignated (C).

Subsec. (d)(1)(C). Pub. L. 115-97, §14302(a), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Pub. L. 115-97, §14201(b)(2)(A), redesignated subpar. (B) as (C).

Subsec. (d)(1)(D). Pub. L. 115-97, §14302(a), redesignated subpar. (C) as (D).

Subsec. (d)(2)(A)(ii). Pub. L. 115-97, §14302(b)(2), substituted “income described in paragraph (1)(A), foreign branch income, and” for “income described in paragraph (1)(A) and”.

Pub. L. 115-97, §14201(b)(2)(B), inserted “income described in paragraph (1)(A) and” before “passive category income”.

Subsec. (d)(2)(E)(i). Pub. L. 115-97, §14301(c)(15)(A), amended cl. (i) generally. Prior to amendment, text read as follows: “The term ‘noncontrolled section 902 corporation’ means any foreign corporation with respect to which the taxpayer meets the stock ownership requirements of section 902(a) (or, for purposes of applying paragraph (3) or (4), the requirements of section 902(b)). A controlled foreign corporation shall not be treated as a noncontrolled section 902 corporation with respect to any distribution out of its earnings and profits for periods during which it was a controlled foreign corporation.”

Subsec. (d)(2)(E)(ii). Pub. L. 115-97, §14301(c)(15)(B), substituted “noncontrolled 10-percent owned foreign corporation” for “non-controlled section 902 corporation”.

Subsec. (d)(2)(J). Pub. L. 115-97, §14302(b)(1), added subpar. (J).

Subsec. (d)(4). Pub. L. 115-97, §14301(c)(16), substituted “noncontrolled 10-percent owned foreign corporations” for “noncontrolled section 902 corporations” in heading and “noncontrolled 10-percent owned foreign corporation” for “noncontrolled section 902 corporation” wherever appearing in text.

Subsec. (d)(6)(A). Pub. L. 115-97, §14301(c)(17), substituted “907” for “902, 907,” in concluding provisions.

Subsec. (g)(5). Pub. L. 115-97, §14304(a), added par. (5).

Subsec. (h)(10)(A). Pub. L. 115-97, §14301(c)(18), substituted “sections 907 and 960” for “sections 902, 907, and 960” in concluding provisions.

Subsec. (k). Pub. L. 115-97, §14301(c)(19), amended subsec. (k) generally. Prior to amendment, text read as follows:

“(1) For increase of limitation under subsection (a) for taxes paid with respect to amounts received which were included in the gross income of the taxpayer for a prior taxable year as a United States shareholder with respect to a controlled foreign corporation, see section 960(b).

“(2) For modification of limitation under subsection (a) for purposes of determining the amount of credit which can be taken against the alternative minimum tax, see section 59(a).”

2014—Subsec. (d)(2)(J). Pub. L. 113-295, §221(a)(72), struck out subpar. (J) which related to a transition rule for taxes paid or accrued in a taxable year beginning before Jan. 1, 1987.

Subsec. (h)(7). Pub. L. 113-295, §219(c), struck out “as ordinary income under section 1246 or” after “gain treated”.

2013—Subsecs. (i) to (l). Pub. L. 112-240 redesignated subsecs. (j) to (l) as (i) to (k), respectively, and struck out former subsec. (i). Text read as follows: “In the case of any taxable year of an individual to which section 26(a)(2) does not apply, for purposes of subsection (a), the tax against which the credit is taken is such tax reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter (other than sections 23, 24, 25A(i), 25B, 30 30B., and 30D).”

2010—Subsec. (d)(6), (7). Pub. L. 111-226, §213(a), added par. (6) and redesignated former par. (6) as (7).

Subsec. (h)(9). Pub. L. 111-226, §217(c)(2), amended par. (9) generally. Prior to amendment, text read as follows: “For purposes of this subsection—

“(A) in the case of interest treated as not from sources within the United States under section 861(a)(1)(A), the corporation paying such interest shall be treated as a United States-owned foreign corporation, and

“(B) in the case of any dividend treated as not from sources within the United States under section 861(a)(2)(A), the corporation paying such dividend shall be treated as a United States-owned foreign corporation.”

Subsec. (i). Pub. L. 111-148, § 10909(b)(2)(K), (c), as amended by Pub. L. 111-312, temporarily struck out “23,” after “than sections”. See Effective and Termination Dates of 2010 Amendment note below.

2009—Subsec. (i). Pub. L. 111-5, § 1144(b)(1)(E), inserted “30B,” after “30”.

Pub. L. 111-5, § 1142(b)(1)(E), substituted “25B, 30, and 30D” for “and 25B”.

Pub. L. 111-5, § 1004(b)(5), inserted “25A(i),” after “24.”

2007—Subsec. (d)(2)(B)(v). Pub. L. 110-172, § 11(g)(10), inserted “and” at end of subcl. (I), redesignated subcl. (III) as (II), substituted “a former FSC (as defined in section 922)” for “a FSC (or a former FSC)” in subcl. (II), struck out former subcl. (II), which read as follows: “taxable income attributable to foreign trade income (within the meaning of section 923(b)), and”, and added concluding provisions.

Subsec. (f)(3)(D)(iv). Pub. L. 110-172, § 11(f)(3), substituted “an affiliated group” for “a controlled group”.

2005—Subsec. (d)(2)(D). Pub. L. 109-135, § 403(o), inserted “as in effect before its repeal” after “section 954(f)”.

Subsec. (g)(2). Pub. L. 109-135, § 403(k), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “For purposes of this subsection—

“(A) IN GENERAL.—The term ‘overall domestic loss’ means any domestic loss to the extent such loss offsets taxable income from sources without the United States for the taxable year or for any preceding taxable year by reason of a carryback. For purposes of the preceding sentence, the term ‘domestic loss’ means the amount by which the gross income for the taxable year from sources within the United States is exceeded by the sum of the deductions properly apportioned or allocated thereto (determined without regard to any carryback from a subsequent taxable year).”

“(B) TAXPAYER MUST HAVE ELECTED FOREIGN TAX CREDIT FOR YEAR OF LOSS.—The term ‘overall domestic loss’ shall not include any loss for any taxable year unless the taxpayer chose the benefits of this subpart for such taxable year.”

Subsec. (i). Pub. L. 109-135, § 402(i)(3)(G), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “In the case of an individual, for purposes of subsection (a), the tax against which the credit is taken is such tax reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter (other than sections 23, 24, and 25B). This subsection shall not apply to taxable years beginning during 2000, 2001, 2002, 2003, 2004, or 2005.”

2004—Subsec. (c). Pub. L. 108-357, § 417(a), struck out “in the second preceding taxable year,” before “in the first preceding taxable year” and substituted “and in any of the first 10” for “, and in the first, second, third, fourth, or fifth”.

Subsec. (d)(1). Pub. L. 108-357, § 404(a), reenacted heading without change and amended text of par. (1) generally, substituting provisions relating to applicability of subsecs. (a), (b), and (c) and sections 902, 907, and 960 to passive category income and general category income, for provisions relating to applicability of subsecs. (a), (b), and (c) and sections 902, 907, and 960 to passive income, high withholding tax interest, financial services income, shipping income, certain dividends from a DISC or former DISC, taxable income attributable to foreign trade income, certain distributions from a FSC or a former FSC, and income other than income previously described.

Subsec. (d)(1)(E). Pub. L. 108-357, § 403(b)(1), struck out subpar. (E) which read as follows: “in the case of a corporation, dividends from noncontrolled section 902 corporations out of earnings and profits accumulated in taxable years beginning before January 1, 2003,”.

Subsec. (d)(2)(A). Pub. L. 108-357, § 404(b), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (d)(2)(A)(ii). Pub. L. 108-357, § 413(c)(14), reenacted heading without change and amended text of cl. (ii) generally. Prior to amendment, text read as follows: “Except as provided in clause (iii), the term ‘passive income’ includes any amount includible in gross income under section 551 or, except as provided in subparagraph (E)(iii) or paragraph (3)(I), section 1293 (relating to certain passive foreign investment companies).”

Subsec. (d)(2)(B). Pub. L. 108-357, § 404(b), redesignated subpar. (A) as (B) and struck out former subpar. (B), which defined the term “high withholding tax interest”.

Subsec. (d)(2)(B)(iii). Pub. L. 108-357, § 404(f)(1), redesignated subcls. (II) and (III) as (I) and (II), respectively, and struck out former subcl. (I) which read as follows: “any income described in a subparagraph of paragraph (1) other than subparagraph (A),”.

Subsec. (d)(2)(B)(v). Pub. L. 108-357, § 404(c), added cl. (v).

Subsec. (d)(2)(C). Pub. L. 108-357, § 404(d), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (d)(2)(C)(iii). Pub. L. 108-357, § 403(b)(2), inserted “and” at end of subcl. (I), redesignated subcl. (III) as (II), and struck out former subcl. (II) which read as follows: “any dividend from a noncontrolled section 902 corporation out of earnings and profits accumulated in taxable years beginning before January 1, 2003, and”.

Subsec. (d)(2)(D). Pub. L. 108-357, § 404(d), redesignated subpar. (C) as (D) and struck out heading and text of former subpar. (D). Text read as follows: “The term ‘shipping income’ means any income received or accrued by any person which is of a kind which would be foreign base company shipping income (as defined in section 954(f) as in effect before its repeal). Such term does not include any financial services income.”

Pub. L. 108-357, § 403(b)(3), substituted “Such term does not include any financial services income” for “Such term does not include any dividend from a noncontrolled section 902 corporation out of earnings and profits accumulated in taxable years beginning before January 1, 2003 and does not include any financial services income”.

Subsec. (d)(2)(D)(i). Pub. L. 108-357, § 404(f)(2), inserted “or” at end of subcl. (I), added subcl. (II), and struck out former subcls. (II) and (III) which read as follows:

“(II) passive income (determined without regard to subclauses (I) and (III) of subparagraph (A)(iii)), or

“(III) export financing interest which (but for subparagraph (B)(ii)) would be high withholding tax interest.”

Subsec. (d)(2)(D)(iii). Pub. L. 108-357, § 404(f)(3), which directed striking out of cl. (iii) “as so redesignated and amended by section 404(b)(3)”, was executed by striking out heading and text of cl. (iii) as amended by section 403(b)(2) and redesignated by section 404(d), to reflect the probable intent of Congress. Text read as follows: “The term ‘financial services income’ does not include—

“(I) any high withholding tax interest, and

“(II) any export financing interest not described in clause (i)(III).”

Subsec. (d)(2)(E)(i). Pub. L. 108-357, § 403(b)(4)(A), inserted “or (4)” after “paragraph (3)”.

Subsec. (d)(2)(E)(ii), (iii). Pub. L. 108-357, § 403(b)(4)(B), redesignated cl. (iii) as (ii) and struck out heading and text of former cl. (ii). Text read as follows: “If a foreign corporation is a noncontrolled section 902 corporation with respect to the taxpayer, taxes on high withholding tax interest (to the extent imposed at a rate in excess of 5 percent) shall not be treated as foreign taxes for purposes of determining the amount of foreign taxes deemed paid by the taxpayer under section 902.”

Subsec. (d)(2)(E)(iv). Pub. L. 108-357, § 403(b)(4)(B), struck out heading and text of cl. (iv). Text read as follows: “All noncontrolled section 902 corporations which are not passive foreign investment companies (as defined in section 1297) shall be treated as one noncon-

trolled section 902 corporation for purposes of paragraph (1).”

Subsec. (d)(2)(H) to (J). Pub. L. 108-357, § 404(e), added subpar. (H) and redesignated former subpars. (H) and (I) as (I) and (J), respectively.

Subsec. (d)(2)(K). Pub. L. 108-357, § 404(f)(5), added subpar. (K).

Subsec. (d)(3). Pub. L. 108-357, § 404(f)(4), reenacted heading without change and amended text of par. (3) generally, substituting provisions consisting of subpars. (A) to (H) for former subpars. (A) to (I) which contained similar provisions.

Subsec. (d)(3)(F)(i). Pub. L. 108-357, § 403(b)(5), substituted “or (D)” for “(D), or (E)”.

Subsec. (d)(4). Pub. L. 108-357, § 403(a), reenacted heading without change and amended text of par. (4) generally, substituting provisions relating to dividends from noncontrolled section 902 corporations, earnings and profits of controlled foreign corporations, and setting forth special rules, for provisions relating to treatment of applicable dividends, defining the term “applicable dividend”, and setting forth special rules.

Subsec. (f)(3)(D). Pub. L. 108-357, § 895(a), added subpar. (D).

Subsec. (g). Pub. L. 108-357, § 402(a), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 108-357, § 402(a), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Pub. L. 108-311 substituted “2003, 2004, or 2005” for “or 2003”.

Subsec. (h)(1)(A). Pub. L. 108-357, § 413(c)(15)(A), inserted “or” at end of cl. (i), redesignated cl. (iii) as (ii), and struck out former cl. (ii) which read as follows: “section 551 (relating to foreign personal holding company income taxed to United States shareholders), or”.

Subsec. (h)(2). Pub. L. 108-357, § 413(c)(15)(B), struck out “foreign personal holding or” before “passive foreign investment” in heading.

Subsecs. (i), (j). Pub. L. 108-357, § 402(a), redesignated subsecs. (h) and (i) as (i) and (j), respectively. Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 108-357, § 402(a), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (l).

Subsec. (k)(3)(A)(i). Pub. L. 108-357, § 404(f)(6), which directed amendment of subsec. (j)(3)(A)(i) by substituting “subsection (d)(2)(B)” for “subsection (d)(2)(A)”, was executed to subsec. (k)(3)(A)(i) to reflect the probable intent of Congress and the amendment by Pub. L. 108-357, § 402(a). See above.

Subsec. (l). Pub. L. 108-357, § 402(a), redesignated subsec. (k) as (l).

2002—Subsec. (h). Pub. L. 107-147, § 601(b)(1), substituted “during 2000, 2001, 2002, or 2003” for “during 2000 or 2001”.

Pub. L. 107-147, § 417(23)(B), amended directory language of Pub. L. 107-16, § 618(b)(2)(D). See 2001 Amendment note below.

2001—Subsec. (h). Pub. L. 107-16, § 618(b)(2)(D), as amended by Pub. L. 107-147, § 417(23)(B), substituted “, 24, and 25B” for “and 24”.

Pub. L. 107-16, § 202(f)(2)(C), substituted “sections 23 and 24” for “section 24”.

Pub. L. 107-16, § 201(b)(2)(G), inserted “(other than section 24)” after “chapter”.

1999—Subsec. (h). Pub. L. 106-170 inserted at end “This subsection shall not apply to taxable years beginning during 2000 or 2001.”

1997—Subsec. (b)(2)(C). Pub. L. 105-34, § 311(c)(3), added subpar. (C).

Subsec. (d)(1)(E). Pub. L. 105-34, § 1105(a)(1), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: “in the case of a corporation, dividends from each noncontrolled section 902 corporation.”

Subsec. (d)(2)(C)(i)(II). Pub. L. 105-34, § 1163(b), substituted “subclauses (I) and (III)” for “subclause (I)”.

Subsec. (d)(2)(C)(iii)(II), (D). Pub. L. 105-34, § 1105(a)(3), inserted “out of earnings and profits accumulated in taxable years beginning before January 1, 2003” after “corporation”.

Subsec. (d)(2)(E)(i). Pub. L. 105-34, § 1111(b), struck out “and except as provided in regulations, the taxpayer

was a United States shareholder in such corporation” after “was a controlled foreign corporation”.

Subsec. (d)(2)(E)(iv). Pub. L. 105-34, § 1105(a)(2), added cl. (iv).

Subsec. (d)(4) to (6). Pub. L. 105-34, § 1105(b), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsecs. (j), (k). Pub. L. 105-34, § 1101(a), added subsec. (j) and redesignated former subsec. (j) as (k).

1996—Subsec. (d)(3)(G). Pub. L. 104-188, § 1501(b)(1), (12), amended subpar. (G) identically, substituting “section 951(a)(1)(B)” for “subparagraph (B) or (C) of section 951(a)(1)”.

Pub. L. 104-188, § 1703(i)(1), substituted “subparagraph (B) or (C) of section 951(a)(1)” for “section 951(a)(1)(B)”.

Subsec. (f)(2)(B)(i). Pub. L. 104-188, § 1704(t)(36), inserted “(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)” after “section 172(h)”.

1993—Subsec. (b)(4). Pub. L. 103-66, § 13227(d), inserted before period at end “(without regard to subsections (a)(4) and (i) thereof)”.

Subsec. (d)(2)(A)(iii)(II) to (IV). Pub. L. 103-66, § 13235(a)(2), inserted “and” at end of subcl. II, substituted “income.” for “income, and” in subcl. III, and struck out subcl. (IV) which read as follows: “any foreign oil and gas extraction income (as defined in section 907(c)).”

1990—Subsec. (b)(3)(D)(i). Pub. L. 101-508, § 11101(d)(5)(A), substituted “subsection (h)” for “subsection (j)”.

Subsec. (b)(3)(E)(iii)(I). Pub. L. 101-508, § 11101(d)(5)(B), substituted “section 1(h)” for “section 1(j)”.

Subsec. (e). Pub. L. 101-508, § 11801(a)(31), struck out subsec. (e) which related to transitional rules for carrybacks and carryovers for taxpayers on the per-country limitation.

1989—Subsec. (d)(1)(H). Pub. L. 101-239, § 7811(i)(1), substituted “interest or carrying charges (as defined in section 927(d)(1) derived from a transaction which results in foreign trade income (as defined in section 923(b))” for “qualified interest and carrying charges (as defined in section 245(c))”.

Subsecs. (i), (j). Pub. L. 101-239, § 7402(a), added subsec. (i) and redesignated former subsec. (i) as (j).

1988—Subsec. (b)(2). Pub. L. 100-647, § 1003(b)(2)(A), amended par. (2) generally, substituting general provisions and provisions setting special rules where there is a capital gain rate differential for provisions for corporations and for other taxpayers.

Subsec. (b)(3)(D). Pub. L. 100-647, § 1003(b)(2)(B), added subpar. (D) and struck out former subpar. (D). Rate differential portion, which read as follows: “The ‘rate differential portion’ of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as the excess of the highest rate of tax specified in section 11(b) over the alternative rate of tax under section 1201(a) bears to the highest rate of tax specified in section 11(b).”

Subsec. (b)(3)(D)(ii). Pub. L. 100-647, § 2004(l), substituted “section 11(b)(1)” for “section 11(b)”.

Subsec. (b)(3)(E). Pub. L. 100-647, § 1003(b)(2)(B), added subpar. (E).

Subsec. (d)(1)(E). Pub. L. 100-647, § 1012(a)(11), inserted “in the case of a corporation,” before “dividends”.

Subsec. (d)(2)(A)(ii). Pub. L. 100-647, § 1012(a)(6)(A), (p)(29)(A), substituted “Except as provided in clause (iii), the term” for “The term” and “or, except as provided in subparagraph (E)(iii) or paragraph (3)(I), section 1293” for “or section 1293”.

Subsec. (d)(2)(A)(iv). Pub. L. 100-647, § 1012(a)(6)(B), added cl. (iv).

Subsec. (d)(2)(B)(iii). Pub. L. 100-647, § 1012(a)(8), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “The Secretary may by regulations provide that amounts (not otherwise high withholding tax interest) shall be treated as high withholding tax interest where necessary to prevent avoidance of the purposes of this subparagraph.”

Subsec. (d)(2)(C). Pub. L. 100-647, §1012(a)(1)(A), amended subpar. (C) generally, revising and restating as cls. (i) to (iii) provisions of former cls. (i) to (iv).

Subsec. (d)(2)(D). Pub. L. 100-647, §1012(a)(2), provided for exclusion from term “shipping income” any dividend from a noncontrolled section 902 corporation and any financial services income.

Subsec. (d)(2)(E)(i). Pub. L. 100-647, §1012(a)(10), inserted “and except as provided in regulations, the taxpayer was a United States shareholder in such corporation” before period at end.

Subsec. (d)(2)(E)(iii). Pub. L. 100-647, §1012(p)(29)(B), added cl. (iii).

Subsec. (d)(2)(I)(ii). Pub. L. 100-647, §1012(a)(9), substituted “except that—” for “except to the extent that—”, added subcls. (I) to (III), and struck out former subcls. (I) and (II) which read as follows:

“(I) the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to shipping income, or

“(II) in the case of an entity meeting the requirements of subparagraph (C)(ii), the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to financial services income, and”.

Subsec. (d)(3)(E). Pub. L. 100-647, §1012(a)(4), inserted first sentence, struck out former first sentence which read “If a controlled foreign corporation meets the requirements of section 954(b)(3)(A) (relating to de minimis rule) for any taxable year, for purposes of this paragraph, none of its income for such taxable year shall be treated as income in a separate category.”, and in second sentence substituted “passive income” for “income (other than high withholding tax interest and dividends from a noncontrolled section 902 corporation)”.

Subsec. (d)(3)(F). Pub. L. 100-647, §1012(a)(7), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “For purposes of this paragraph, the term ‘separate category’ means any category of income described in subparagraph (A), (B), (C), (D), or (E) of paragraph (1).”

Subsec. (d)(3)(H). Pub. L. 100-647, §1012(a)(3), added subpar. (H).

Subsec. (d)(3)(I). Pub. L. 100-647, §1012(p)(11), added subpar. (I).

Subsec. (f)(5)(F). Pub. L. 100-647, §1012(c), added subpar. (F).

Subsec. (g)(9)(A). Pub. L. 100-647, §1012(q)(12), substituted “861(a)(1)(A)” for “861(a)(1)(B)”.

Subsec. (g)(10), (11). Pub. L. 100-647, §1012(bb)(4)(A), added par. (10) and redesignated former par. (10) as (11).

1986—Subsec. (a). Pub. L. 99-514, §104(b)(13), struck out last sentence “For purposes of the preceding sentence, in the case of an individual the entire taxable income shall be reduced by an amount equal to the zero bracket amount.”

Subsec. (b)(3)(C). Pub. L. 99-514, §1211(b)(3), redesignated subpar. (E) as (C) and struck out former subpar. (C), exception for gain from the sale of certain personal property, which read as follows: “There shall be included as gain from sources within the United States any gain from sources without the United States from the sale or exchange of a capital asset which is personal property which—

“(i) in the case of an individual, is sold or exchanged outside of the country (or possession) of the individual’s residence,

“(ii) in the case of a corporation, is stock in a second corporation sold or exchanged other than in a country (or possession) in which such second corporation derived more than 50 percent of its gross income for the 3-year period ending with the close of such second corporation’s taxable year immediately preceding the year during which the sale or exchange occurred, or

“(iii) in the case of any taxpayer, is personal property (other than stock in a corporation) sold or exchanged other than in a country (or possession) in which such property is used in a trade or business of

the taxpayer or in which such taxpayer derived more than 50 percent of its gross income for the 3-year period ending with the close of its taxable year immediately preceding the year during which the sale or exchange occurred,

unless such gain is subject to an income, war profits, or excess profits tax of a foreign country or possession of the United States, and the rate of tax applicable to such gain is 10 percent or more of the gain from the sale or exchange (computed under this chapter).”

Subsec. (b)(3)(D). Pub. L. 99-514, §1211(b)(3), redesignated subpar. (F) as (D) and struck out former subpar. (D), gain from liquidation of certain foreign corporations, which read as follows: “Subparagraph (C) shall not apply with respect to a distribution in liquidation of a foreign corporation to which part II of subchapter C applies if such corporation derived less than 50 percent of its gross income from sources within the United States for the 3-year period ending with the close of such corporation’s taxable year immediately preceding the year during which the distribution occurred.”

Subsec. (b)(3)(E), (F). Pub. L. 99-514, §1211(b)(3), redesignated former subpars. (E) and (F) as (C) and (D), respectively.

Subsec. (d). Pub. L. 99-514, §1201(d)(1), substituted “certain categories of income” for “certain interest income and income from DISC, former DISC, FSC, or former FSC” in heading.

Subsec. (d)(1). Pub. L. 99-514, §1201(a), (d)(2), (3), inserted “and sections 902, 907, and 960” in introductory provisions, added subpars. (A) to (E), struck out former subpar. (A) which read “the interest income described in paragraph (2)”, redesignated former subpars. (B), (C), (D), and (E) as (F), (G), (H), and (I), respectively, and in subpar. (I), substituted “in any of the preceding subparagraphs” for “in subparagraph (A), (B), (C), or (D)”.

Pub. L. 99-514, §1899A(24), made technical correction clarifying heading. See 1984 Amendment note below.

Subsec. (d)(1)(D). Pub. L. 99-514, §1876(d)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: “distributions from a FSC (or former FSC) out of earnings and profits attributable to foreign trade income (within the meaning of section 923(b)), and”.

Subsec. (d)(2). Pub. L. 99-514, §1201(b), added par. (2) and struck out former par. (2), interest income to which applicable, which read as follows: “For purposes of this subsection, the interest income described in this paragraph is interest other than interest—

“(A) derived from any transaction which is directly related to the active conduct by the taxpayer of a trade or business in a foreign country or a possession of the United States,

“(B) derived in the conduct by the taxpayer of a banking, financing, or similar business,

“(C) received from a corporation in which the taxpayer (or one or more includible corporations in an affiliated group, as defined in section 1504, of which the taxpayer is a member) owns, directly or indirectly, at least 10 percent of the voting stock, or

“(D) received on obligations acquired as a result of the disposition of a trade or business actively conducted by the taxpayer in a foreign country or possession of the United States or as a result of the disposition of stock or obligations of a corporation in which the taxpayer owned at least 10 percent of the voting stock.

For purposes of subparagraph (C), stock owned, directly or indirectly, by or for a foreign corporation, shall be considered as being proportionately owned by its shareholders. For purposes of this subsection, interest (after the operation of section 904(d)(3)) received from a designated payor corporation described in section 904(d)(3)(E)(iii) by a taxpayer which owns directly or indirectly less than 10 percent of the voting stock of such designated payor corporation shall be treated as interest described in subparagraph (A) to the extent such interest would have been so treated had such taxpayer received it from other than a designated payor corporation.”

Pub. L. 99-514, §1810(b)(3), inserted at end “For purposes of this subsection, interest (after the operation of section 904(d)(3)) received from a designated payor corporation described in section 904(d)(3)(E)(iii) by a taxpayer which owns directly or indirectly less than 10 percent of the voting stock of such designated payor corporation shall be treated as interest described in subparagraph (A) to the extent such interest would have been so treated had such taxpayer received it from other than a designated payor corporation.”

Subsec. (d)(3). Pub. L. 99-514, §1201(b), added par. (3) and struck out former par. (3) treating as interest certain amounts attributable to United States-owned foreign corporations, etc., subpars. thereof relating to following subject matter: (A) general provisions, (B) separate limitation interest, (C) exception where designated corporation has small amount of separate limitation interest, (D) treatment of certain interest, (E) designated payor corporation, (F) determination of year to which amount is attributable, (G) ordering rules, (H) dividend, (I) interest and dividends from members of same affiliated group, and (J) distributions through other entities.

Subsec. (d)(3)(C). Pub. L. 99-514, §1810(b)(1), inserted at end “The preceding sentence shall not apply to any amount includible in gross income under section 551 or 951.”

Subsec. (d)(3)(E). Pub. L. 99-514, §1810(b)(4)(A), inserted at end:

“(iv) any other corporation formed or availed of for purposes of avoiding the provisions of this paragraph. For purposes of this paragraph, the rules of paragraph (9) of subsection (g) shall apply.”

Subsec. (d)(3)(I). Pub. L. 99-514, §1810(b)(2), redesignated subpar. (I) as (J) and added a new subpar. (I), interest and dividends from members of same affiliated group, which read as follows: “For purposes of this paragraph, dividends and interest received or accrued by the designated payor corporation from another member of the same affiliated group (determined under section 1504 without regard to subsection (b)(3) thereof) shall be treated as separate limitation interest if (and only if) such amounts are attributable (directly or indirectly) to separate limitation interest of any other member of such group.”

Subsec. (d)(3)(J). Pub. L. 99-514, §1810(b)(2), redesignated subpar. (I) as (J) and struck out former subpar. (J), interest from members of same affiliated group, which read as follows: “For purposes of this paragraph, interest received or accrued by the designated payor corporation from another member of the same affiliated group (determined under section 1504 without regard to subsection (b)(3) thereof) shall not be treated as separate limitation interest, unless such interest is attributable directly or indirectly to separate limitation interest of such other member.”

Subsec. (d)(4), (5). Pub. L. 99-514, §1201(b), added pars. (4) and (5).

Subsec. (f)(5). Pub. L. 99-514, §1203(a), added par. (5).

Subsec. (g)(1)(A)(iii). Pub. L. 99-514, §1235(f)(4)(A), added cl. (iii).

Subsec. (g)(2). Pub. L. 99-514, §1235(f)(4)(B), substituted “holding or passive foreign investment company” for “holding company” in heading.

Subsec. (g)(9), (10). Pub. L. 99-514, §1810(a)(1)(A), added par. (9) and redesignated former par. (9) as (10).

Subsec. (i)(2). Pub. L. 99-514, §701(e)(4)(H), struck out “by an individual” after “can be taken” and substituted “section 59(a)” for “section 55(c)”.

1984—Subsec. (d). Pub. L. 98-369, §801(d)(2)(C), which directed amendment of par. (1) heading by substituting “Separate application of section with respect to certain interest income and income from DISC, former DISC, FSC, or former FSC” for “Application of section in case of certain interest income and dividends from a DISC or former DISC” was executed to subsec. (d) heading to reflect the probable intent of Congress.

Subsec. (d)(1)(B) to (E). Pub. L. 98-369, §801(d)(2)(A), (B), struck out “and” after “United States,” at end of subpar. (B), substituted “taxable income attributable

to foreign trade income (within the meaning of section 923(b)),” for “income other than the interest income described in paragraph (2) and dividends described in subparagraph (B),” in subpar. (C), and added subpars. (D) and (E).

Subsec. (d)(3). Pub. L. 98-369, §122(a), added par. (3).

Subsec. (g). Pub. L. 98-369, §121(a), added subsec. (g). Former subsec. (g) redesignated (h).

Pub. L. 98-369, §474(r)(21), amended subsec. (g) generally, substituting “Coordination with nonrefundable personal credits” for “Coordination with credit for the elderly” in heading and in text substituting “reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter” for “reduced by the amount of the credit (if any) for the taxable year allowable under section 37 (relating to credit for the elderly and the permanently and totally disabled)”.

Subsecs. (h), (i). Pub. L. 98-369, §121(a), redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

1983—Subsec. (g). Pub. L. 98-21 substituted “relating to credit for the elderly and the permanently and totally disabled” for “relating to credit for the elderly”.

1982—Subsec. (f)(4) to (6). Pub. L. 97-248 struck out par. (4) which provided for the determination of foreign oil related loss where section 907 was applicable, redesignated par. (5) as (4), and purported to redesignate par. (6) as (5). However, subsec. (f) did not contain a par. (6).

1980—Subsec. (b)(3)(F). Pub. L. 96-222, §104(a)(3)(D)(i), redesignated subpar. (E) “Rate differential portion”, added by Pub. L. 95-600, as (F).

1978—Subsec. (b)(2). Pub. L. 95-600, §§403(c)(4)(A), 701(u)(2)(A), (3)(A), in subpar. (A) substituted “this section” for “subsection (a)”, “the rate differential portion” for “three eighths” wherever appearing, and “for purposes of determining taxable income from sources without the United States, any net capital loss (and any amount which is a short term capital loss under section 1212(a))” for “any net capital loss”.

Subsec. (b)(3). Pub. L. 95-600, §§403(c)(4)(B), 701(u)(2)(B), (C), as amended by Pub. L. 96-222, §104(a)(3)(D)(ii), substituted “There” for “For purposes of this paragraph, there”, added subpar. (D), redesignated former subpar. (D), relating to section 1231 gains, as subpar. (E), and added another subpar. (E), relating to rate differential portion. See 1980 Amendment note above.

Subsec. (f)(2)(A). Pub. L. 95-600, §701(u)(4)(A), struck out provision relating to capital loss carrybacks and carryovers.

Subsec. (f)(4). Pub. L. 95-600, §701(u)(4)(B), (8)(C), substituted in introductory provisions “In making the separate computation under this subsection with respect to foreign oil related income which is required by section 907(b)” for “In the case of a corporation to which section 907(b)(1) applies” and in subpar. (A) struck out provision relating to capital loss carrybacks and carryovers.

Subsec. (f)(5). Pub. L. 95-600, §701(q)(2), added par. (5).

Subsec. (h). Pub. L. 95-600, §421(e)(6), designated existing provisions as par. (1) and added par. (2).

1977—Subsec. (a). Pub. L. 95-30 provided that, for purposes of determining the maximum total amount of the credit taken under section 901(a), in the case of an individual, the entire taxable income shall be reduced by an amount equal to the zero bracket amount.

1976—Subsec. (a). Pub. L. 94-455, §1031(a), struck out provisions allowing the per-country limitation, made the overall limitation applicable to all taxpayers to determine their foreign tax credit limitation, and inserted reference to section 901(a).

Subsec. (b). Pub. L. 94-455, §§1031(a), 1034(a), 1051(e), redesignated subsec. (c) as (b)(1), inserted provisions that the net United States capital losses would offset net foreign capital gains and, in the case of corporations, that only  $\frac{30}{48}$  of the net foreign source gain would be included in the foreign tax credit limitation, and that the gain from the sale or exchange of personal property outside the United States would be considered United States source income unless one of three exceptions applied, and added par. (4).

Subsec. (c). Pub. L. 94-455, § 1031(a), redesignated subsec. (d) as (c), and amended the redesignated subsec. (c) generally to conform to the elimination of the per-country limitation in subsec. (a). Former subsec. (c) redesignated (b)(1).

Subsec. (d). Pub. L. 94-455, § 1031(a), redesignated subsec. (f)(1), (2), as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 94-455, § 1031(a), added subsec. (e). Former subsec. (e) was eliminated in view of the amendment of subsec. (a).

Subsec. (f). Pub. L. 94-455, §§ 1031(a), 1032(a), 1901(b)(10)(B), added subsec. (f), and substituted “section 172(h)” for “section 172(k)(1)” in pars. (2)(B)(i) and (4)(B)(i). Former subsec. (f)(1), (2), was redesignated (d). Former subsecs. (f)(3), (4), (5) were omitted.

Subsec. (g). Pub. L. 94-455, §§ 1032(a), 503(b)(1), added subsec. (g). Former subsec. (f) redesignated (g), and further redesignated (h).

Subsec. (h). Pub. L. 94-455, § 503(b)(1), redesignated former subsec. (g) as (h).

1971—Subsec. (f). Pub. L. 92-178, § 502(b)(2), inserted “and dividends from a DISC or former DISC” after “interest income” in the heading.

Subsec. (f)(1). Pub. L. 92-178, § 502(b)(2), inserted “each of the following items of income” in introductory text, added subpar. (B), and redesignated former subpar. (B) as (C), inserting therein provisions respecting dividends described in subparagraph (B).

Subsec. (f)(3). Pub. L. 92-178, § 502(b)(3), provided that the limitation provided by subsec. (a)(2) shall not apply to dividends described in paragraph (1)(B) and substituted “limitation provided by subsection (a)(2) applies with respect to income described in paragraph (1)(B) and (C)” for “limitation provided by subsection (a)(2) applies with respect to income other than the interest income described in paragraph (2)”.

Subsec. (f)(5). Pub. L. 92-178, § 502(b)(4), added par. (5).

1969—Subsec. (b)(1). Pub. L. 91-172, § 506(b)(1), substituted “(A) with the consent of the Secretary or his delegate with respect to any taxable year or (B) for the taxpayer’s first taxable year beginning after December 31, 1969” for “with the consent of the Secretary or his delegate with respect to any taxable year”.

Subsec. (b)(2). Pub. L. 91-172, § 506(b)(2), substituted “Except in a case to which paragraph (1)(B) applies, if the taxpayer” for “If a taxpayer”.

1966—Subsec. (f)(2). Pub. L. 89-809 inserted reference to includible corporations in an affiliated group, as defined in section 1504, of which the taxpayer is a member and inserted reference to both direct and indirect ownership in subpar. (C) and inserted provision that, for purposes of subpar. (C), stock owned directly or indirectly by or for a foreign corporation shall be considered as being proportionately owned by its shareholders.

1964—Subsec. (g)(2). Pub. L. 88-272 substituted “section 1503(b)” for “section 1503(d)”.

1962—Subsec. (f). Pub. L. 87-834, § 10(a), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 87-834, §§ 10(a), 12(b)(2), redesignated former subsec. (f) as (g), designated existing provisions as par. (2), and added par. (1).

1960—Subsec. (a). Pub. L. 86-780, § 1(a), designated existing provisions as par. (1), inserted introductory clause “In the case of any taxpayer who elects the limitation provided by this paragraph” and inserted “foreign”, “or possession of the United States” and “or possession” therein and added par. (2).

Subsec. (b). Pub. L. 86-780, § 1(a), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 86-780, § 1(b), redesignated former subsec. (b) as (c) and inserted “applicable” before “limitation” therein. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 86-780, § 1(c), redesignated former subsec. (c) as (d) and inserted “applicable” before “limitation” in two places.

Subsecs. (e), (f). Pub. L. 86-780, § 1(d), added subsecs. (e) and (f).

1958—Subsec. (c). Pub. L. 85-866 added subsec. (c).

## Statutory Notes and Related Subsidiaries

### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13001(b)(2)(M) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 13001(c)(1) of Pub. L. 115-97, set out as a note under section 11 of this title.

Amendment by section 14101(d) of Pub. L. 115-97 applicable to distributions made after Dec. 31, 2017, and applicable to deductions with respect to taxable years ending after Dec. 31, 2017, see section 14101(f) of Pub. L. 115-97, set out as an Effective Date note under section 245A of this title.

Pub. L. 115-97, title I, § 14201(d), Dec. 22, 2017, 131 Stat. 2213, provided that: “The amendments made by this section [enacting section 951A of this title and amending this section and section 960 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.”

Amendment by section 14301(c)(15)–(19) of Pub. L. 115-97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14301(d) of Pub. L. 115-97, set out as a note under section 78 of this title.

Pub. L. 115-97, title I, § 14302(c), Dec. 22, 2017, 131 Stat. 2225, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.”

Pub. L. 115-97, title I, § 14304(b), Dec. 22, 2017, 131 Stat. 2226, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.”

### EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. A, title II, § 219(d), Dec. 19, 2014, 128 Stat. 4035, provided that: “The amendments made by this section [amending this section, section 199 of this title, and provisions set out as a note under section 114 of this title] shall take effect as if included in the provision of the American Jobs Creation Act of 2004 [Pub. L. 108-357] to which they relate.”

Amendment by section 221(a)(72) of 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 2013 AMENDMENT

Amendment by Pub. L. 112-240 applicable to taxable years beginning after Dec. 31, 2011, see section 104(d) of Pub. L. 112-240, set out as a note under section 23 of this title.

### EFFECTIVE AND TERMINATION DATES OF 2010 AMENDMENT

Pub. L. 111-226, title II, § 213(b), Aug. 10, 2010, 124 Stat. 2399, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 10, 2010].”

Amendment by section 217(c)(2) of Pub. L. 111-226 applicable to taxable years beginning after Dec. 31, 2010, with certain exceptions, see section 217(d) of Pub. L. 111-226, set out as an Effective Date of 2010 Amendment note under section 861 of this title.

Amendment by Pub. L. 111-148 terminated applicable to taxable years beginning after Dec. 31, 2011, and section is amended to read as if such amendment had never been enacted, see section 10909(c) of Pub. L. 111-148, set out as a note under section 1 of this title.

Amendment by Pub. L. 111-148 applicable to taxable years beginning after Dec. 31, 2009, see section 10909(d) of Pub. L. 111-148, set out as a note under section 1 of this title.

### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by section 1004(b)(5) of Pub. L. 111-5 applicable to taxable years beginning after Dec. 31, 2008,



see section 1004(d) of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1142(b)(1)(E) of Pub. L. 111-5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Amendment by section 1144(b)(1)(E) of Pub. L. 111-5 applicable to taxable years beginning after Dec. 31, 2008, see section 1144(c) of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

#### EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-172, §11(f)(4), Dec. 29, 2007, 121 Stat. 2489, provided that: “The amendments made by this subsection [amending this section and sections 1298 and 9502 of this title] shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 [Pub. L. 108-357] to which they relate.”

#### EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by section 402(i)(3)(G) of Pub. L. 109-135 subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, §901, in the same manner as the provisions of such Act to which such amendment relates, see section 402(i)(3)(H) of Pub. L. 109-135, set out as a note under section 23 of this title. Title IX of Pub. L. 107-16 was repealed by Pub. L. 112-240, title I, §101(a)(1), Jan. 2, 2013, 126 Stat. 2315.

Amendment by section 402(i)(3)(G) of Pub. L. 109-135 effective as if included in the provisions of the Energy Policy Act of 2005, Pub. L. 109-58, to which it relates and applicable to taxable years beginning after Dec. 31, 2005, see section 402(m) of Pub. L. 109-135, set out as a note under section 23 of this title.

Amendments by section 403(k), (o) of Pub. L. 109-135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which they relate, see section 403(nn) of Pub. L. 109-135, set out as an Effective Date of 2005 Amendment note under section 26 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 402(a) of Pub. L. 108-357 applicable to losses for taxable years beginning after Dec. 31, 2006, see section 402(c) of Pub. L. 108-357, set out as a note under section 535 of this title.

Amendment by section 403(a), (b)(1)–(5) of Pub. L. 108-357 applicable to taxable years beginning after Dec. 31, 2002, see section 403(c) of Pub. L. 108-357, set out as a note under section 864 of this title.

Amendment by section 403(a), (b)(1)–(5) of Pub. L. 108-357 not applicable to taxable years beginning after Dec. 31, 2002, and before Jan. 1, 2005, with a specific provision for application of subsec. (d)(4)(C)(iv) of this section, if taxpayer so elects, see section 403(d) of Pub. L. 108-357, set out as a note under section 864 of this title.

Pub. L. 108-357, title IV, §404(g), Oct. 22, 2004, 118 Stat. 1497, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.

“(2) TRANSITIONAL RULE RELATING TO INCOME TAX BASE DIFFERENCE.—Section 904(d)(2)(H)(ii) of the Internal Revenue Code of 1986, as added by subsection (e), shall apply to taxable years beginning after December 31, 2004.”

Amendment by section 413(c)(14), (15) of Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108-357, title IV, §417(c), Oct. 22, 2004, 118 Stat. 1512, provided that:

“(1) CARRYBACK.—The amendments made by subsections (a)(1) and (b)(1) [amending this section and section 907 of this title] shall apply to excess foreign taxes arising in taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].

“(2) CARRYOVER.—The amendments made by subsections (a)(2) and (b)(2) [amending this section and section 907 of this title] shall apply to excess foreign taxes which (without regard to the amendments made by this section [amending this section and section 907 of this title]) may be carried to any taxable year ending after the date of the enactment of this Act [Oct. 22, 2004].”

Pub. L. 108-357, title VIII, §895(b), Oct. 22, 2004, 118 Stat. 1648, provided that: “The amendment made by this section [amending this section] shall apply to dispositions after the date of the enactment of this Act [Oct. 22, 2004].”

Amendment by Pub. L. 108-311 applicable to taxable years beginning after Dec. 31, 2003, see section 312(c) of Pub. L. 108-311, set out as a note under section 26 of this title.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 601(b)(1) of Pub. L. 107-147 applicable to taxable years beginning after Dec. 31, 2001, see section 601(c) of Pub. L. 107-147, set out as a note under section 26 of this title.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by sections 201(b), 202(f), and 618(b) of Pub. L. 107-16 inapplicable to taxable years beginning during 2004 or 2005, see section 312(b)(2) of Pub. L. 108-311, set out as a note under section 23 of this title.

Amendment by sections 201(b), 202(f), and 618(b) of Pub. L. 107-16 inapplicable to taxable years beginning during 2002 and 2003, see section 601(b)(2) of Pub. L. 107-147, set out as a note under section 23 of this title.

Amendment by section 201(b)(2)(G) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 201(e)(2) of Pub. L. 107-16, set out as a note under section 24 of this title.

Amendment by section 202(f)(2)(C) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 202(g)(1) of Pub. L. 107-16, set out as a note under section 23 of this title.

Amendment by section 618(b)(2)(D) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 618(d) of Pub. L. 107-16, set out as a note under section 24 of this title.

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to taxable years beginning after Dec. 31, 1998, see section 501(c) of Pub. L. 106-170, set out as a note under section 24 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 311(c)(3) of Pub. L. 105-34 applicable to taxable years ending after May 6, 1997, see section 311(d) of Pub. L. 105-34, set out as a note under section 1 of this title.

Pub. L. 105-34, title XI, §1101(b), Aug. 5, 1997, 111 Stat. 963, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997.”

Pub. L. 105-34, title XI, §1105(c), Aug. 5, 1997, 111 Stat. 968, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002.”

Pub. L. 105-34, title XI, §1111(c)(2), Aug. 5, 1997, 111 Stat. 969, provided that: “The amendment made by subsection (b) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 5, 1997].”

Pub. L. 105-34, title XI, §1163(c), Aug. 5, 1997, 111 Stat. 987, provided that: “The amendments made by this section [amending this section and section 902 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].”

## EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, §1501(d), Aug. 20, 1996, 110 Stat. 1826, provided that: "The amendments made by this section [amending this section and sections 951, 956, 959, 989, and 1297 of this title and repealing section 956A of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end."

Amendment by section 1703(i)(1) of Pub. L. 104-188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103-66, §§13001-13444, to which such amendment relates, see section 1703(o) of Pub. L. 104-188, set out as a note under section 39 of this title.

## EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13227(d) of Pub. L. 103-66 applicable to taxable years beginning after Dec. 31, 1993, see section 13227(f) of Pub. L. 103-66 set out as a note under section 56 of this title.

Pub. L. 103-66, title XIII, §13235(c), Aug. 10, 1993, 107 Stat. 505, provided that: "The amendments made by this section [amending this section and sections 907 and 954 of this title] shall apply to taxable years beginning after December 31, 1992."

## EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(5) 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.

## EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VII, §7402(b), Dec. 19, 1989, 103 Stat. 2358, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after July 10, 1989."

Amendment by section 7811(i)(1) 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

Pub. L. 100-647, title I, §1012(bb)(4)(B), Nov. 10, 1988, 102 Stat. 3535, provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the amendment made by section 121 of the Tax Reform Act of 1984 [Pub. L. 98-369]."

Amendment by sections 1003(b)(2) and 1012(a)(1)(A), (2)-(4), (6)-(11), (c), (p)(11), (29), (q)(12) 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.

Amendment by section 2004(l) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provisions of the Revenue Act of 1987, Pub. L. 100-203, title X, to which such amendment relates, see section 2004(u) of Pub. L. 100-647, set out as a note under section 56 of this title.

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 104(b)(13) 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 701(e)(4)(H) of Pub. L. 99-514 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 an Effective Date note under section 55 of this title.

Pub. L. 99-514, title XII, §1201(e), Oct. 22, 1986, 100 Stat. 2525, as amended by Pub. L. 100-647, title I,

§1012(a)(5), Nov. 10, 1988, 102 Stat. 3495; Pub. L. 101-239, title VII, §7404(a), Dec. 19, 1989, 103 Stat. 2361, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 864 and 954 of this title] shall apply to taxable years beginning after December 31, 1986.

"[(2) Repealed. Pub. L. 101-239, title VII, §7404(a), Dec. 19, 1989, 103 Stat. 2361.]

"(3) SPECIAL RULE FOR TAXPAYER WITH OVERALL FOREIGN LOSS.—

"(A) IN GENERAL.—If a taxpayer incorporated on June 20, 1928, the principal headquarters of which is in Minneapolis, Minnesota, sustained an overall foreign loss (as defined in section 904(f)(2) of the Internal Revenue Code of 1954 [now 1986]) in taxable years beginning before January 1, 1986, in connection with 2 separate trades or businesses which the taxpayer had, during 1985, substantially disposed of in tax-free transactions pursuant to section 355 of such Code, then an amount, not to exceed \$40,000,000 of foreign source income, which, but for this paragraph, would not be treated as overall limitation income, shall be so treated.

"(B) SUBSTANTIAL DISPOSITION.—For purposes of this paragraph, a taxpayer shall be treated as having substantially disposed of a trade or business if the retained portion of such business had sales of less than 10 percent of the annual sales of such business for taxable years ending in 1985."

[Pub. L. 101-239, title VII, §7404(b), (c), Dec. 19, 1989, 103 Stat. 2361, provided that:

"[(b) EFFECTIVE DATE.—The repeal made by subsection (a) [amending section 1201(e) of Pub. L. 99-514, set out above] shall apply to taxable years beginning after December 31, 1989.

"[(c) EXCEPTION FOR CERTAIN TAXPAYERS WITH SUBSTANTIAL LOAN LOSS RESERVES.—

"[(1) IN GENERAL.—The repeal made by subsection (a) shall not apply to any taxpayer if, on any financial statement filed by such taxpayer for regulatory purposes with respect to any quarter ending during the period beginning on March 31, 1989, and ending on December 31, 1989, such taxpayer showed loss reserves against its qualified loans equal to at least 25 percent of the amount of such loans.

"[(2) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"[(A) QUALIFIED LOAN.—The term 'qualified loan' has the meaning given such term by section 1201(e)(2)(H) of the Tax Reform Act of 1986 [Pub. L. 99-514, formerly set out above] (as in effect before its repeal by subsection (a)).

"[(B) PARENT-SUBSIDIARY CONTROLLED GROUPS.—In the case of any taxpayer which is a member of a parent-subsidiary controlled group (as defined in section 585(c)(5)(A) [26 U.S.C. 585(c)(5)(A)]), this subsection shall be applied by treating all members of such group as 1 taxpayer."]

Pub. L. 99-514, title XII, §1203(b), Oct. 22, 1986, 100 Stat. 2532, provided that: "The amendment made by subsection (a) [amending this section] shall apply to losses incurred in taxable years beginning after December 31, 1986."

Amendment by section 1211(b)(3) 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 1235(f)(4) of Pub. L. 99-514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99-514, set out as an Effective Date note under section 1291 of this title.

Pub. L. 99-514, title XVIII, §1810(a)(1)(B), Oct. 22, 1986, 100 Stat. 2822, provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect on March 28, 1985. In the case of any taxable year ending after such date of any corporation treated as a

United States-owned foreign corporation by reason of the amendment made by subparagraph (A)—

“(i) only income received or accrued by such corporation after such date shall be taken into account under section 904(g) of the Internal Revenue Code of 1954 [now 1986]; except that

“(ii) paragraph (5) of such section 904(g) shall be applied by taking into account all income received or accrued by such corporation during such taxable year.”

Pub. L. 99-514, title XVIII, § 1810(b)(4)(B), Oct. 22, 1986, 100 Stat. 2824, provided that:

“(i) The amendment made by subparagraph (A) [amending this section] insofar as it adds the last sentence to subparagraph (E) of section 905(d)(3) [904(d)(3)] shall take effect on March 28, 1985. In the case of any taxable year ending after such date of any corporation treated as a designated payor corporation by reason of the amendment made by subparagraph (A)—

“(I) only income received or accrued by such corporation after such date shall be taken into account under section 904(d)(3) of the Internal Revenue Code of 1954 [now 1986]; except that

“(II) subparagraph (C) of such section 904(d)(3) shall be applied by taking into account all income received or accrued by such corporation during such taxable year.

“(ii) The amendment made by subparagraph (A) insofar as it adds clause (iv) to subparagraph (E) of section 904(d)(3) shall take effect on December 31, 1985. For purposes of such amendment, the rule of the second sentence of clause (i) shall be applied by taking into account December 31, 1985, in lieu of March 28, 1985.”

Amendment by sections 1810(b)(1)–(3) and 1876(d)(2) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, § 121(b), July 18, 1984, 98 Stat. 640, as amended by Pub. L. 99-514, § 2, title XVIII, § 1810(a)(2), (3), Oct. 22, 1986, 100 Stat. 2095, 2822, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984]. In the case of any taxable year of any United States-owned foreign corporation ending after the date of the enactment of this Act—

“(A) only income received or accrued by such foreign corporation after such date of enactment shall be taken into account under section 904(g) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)); except that

“(B) paragraph (5) of such section 904(g) (relating to exception where small amount of United States source income) shall be applied by taking into account all income received or accrued by such foreign corporation during such taxable year.

“(2) SPECIAL RULE FOR APPLICABLE CFC.—

“(A) IN GENERAL.—In the case of qualified interest received or accrued by an applicable CFC before January 1, 1992—

“(i) such interest shall not be taken into account under section 904(g) of the Internal Revenue Code of 1986 (as added by subsection (a)), except that

“(ii) such interest shall be taken into account for purposes of applying paragraph (5) of such section 904(g) (relating to exception where small amount of United States source income).

“(B) QUALIFIED INTEREST.—For purposes of subparagraph (A), the term ‘qualified interest’ means—

“(i) the aggregate amount of interest received or accrued during any taxable year by an applicable CFC on United States affiliate obligations held by such applicable CFC, multiplied by,

“(ii) a fraction (not in excess of 1)—

“(I) the numerator of which is the sum of the aggregate principal amount of United States affiliate obligations held by the applicable CFC on March 31, 1984, but not in excess of the applicable limit, and

“(II) the denominator of which is the average daily principal amount of United States affiliate obligations held by such applicable CFC during the taxable year.

Proper adjustments shall be made to the numerator described in clause (ii)(I) for original issue discount accruing after March 31, 1984, on CFC obligations and United States affiliate obligations.

“(C) ADJUSTMENT FOR RETIREMENT OF CFC OBLIGATIONS.—The amount described in subparagraph (B)(ii)(I) for any taxable year shall be reduced by the sum of—

“(i) the excess of (I) the aggregate principal amount of CFC obligations which are outstanding on March 31, 1984, but only with respect to obligations issued before March 8, 1984, or issued after March 7, 1984, by the applicable CFC pursuant to a binding commitment in effect on March 7, 1984, over (II) the average daily outstanding principal amount during the taxable year of the CFC obligations described in subclause (I), and

“(ii) the portion of the equity of such applicable CFC allocable to the excess described in clause (i) (determined on the basis of the debt-equity ratio of such applicable CFC on March 31, 1984).

“(D) APPLICABLE CFC.—For purposes of this paragraph, the term ‘applicable CFC’ means any controlled foreign corporation (within the meaning of section 957)—

“(i) which was in existence on March 31, 1984, and

“(ii) the principal purpose of which on such date consisted of the issuing of CFC obligations (or short-term borrowing from nonaffiliated persons) and lending the proceeds of such obligations (or such borrowing) to affiliates.

“(E) AFFILIATES; UNITED STATES AFFILIATES.—For purposes of this paragraph—

“(i) AFFILIATE.—The term ‘affiliate’ means any person who is a related person (within the meaning of section 482 of the Internal Revenue Code of 1986) to the applicable CFC.

“(ii) UNITED STATES AFFILIATE.—The term ‘United States affiliate’ means any United States person which is an affiliate of the applicable CFC.

“(iii) TREATMENT OF CERTAIN FOREIGN CORPORATIONS ENGAGED IN BUSINESS IN UNITED STATES.—For purposes of clause (ii), a foreign corporation shall be treated as a United States person with respect to any interest payment made by such corporation if—

“(I) at least 50 percent of the gross income from all sources of such corporation for the 3-year period ending with the close of its last taxable year ending on or before March 31, 1984, was effectively connected with the conduct of a trade or business within the United States, and

“(II) at least 50 percent of the gross income from all sources of such corporation for the 3-year period ending with the close of its taxable year preceding the payment of such interest was effectively connected with the conduct of a trade or business within the United States.

“(F) UNITED STATES AFFILIATE OBLIGATIONS.—For purposes of this paragraph, the term ‘United States affiliate obligations’ means any obligation of (and payable by) a United States affiliate.

“(G) CFC OBLIGATION.—For purposes of this paragraph, the term ‘CFC obligation’ means any obligation of (and issued by) a CFC if—

“(i) the requirements of clause (i) of [former] section 163(f)(2)(B) of the Internal Revenue Code of 1986 are met with respect to such obligation, and

“(ii) in the case of an obligation issued after December 31, 1982, the requirements of clause (ii) of such [former] section 163(f)(2)(B) are met with respect to such obligation.

“(H) TREATMENT OF OBLIGATIONS WITH ORIGINAL ISSUE DISCOUNT.—For purposes of this paragraph, in the case of any obligation with original issue discount, the principal amount of such obligation as of any day shall be treated as equal to the revised issue price as of such day (as defined in section 1278(a)(4) of the Internal Revenue Code of 1986).

“(I) APPLICABLE LIMIT.—For purposes of subparagraph (B)(ii)(I), the term ‘applicable limit’ means the sum of—

“(i) the equity of the applicable CFC on March 31, 1984, and

“(ii) the aggregate principal amount of CFC obligations outstanding on March 31, 1984, which were issued by an applicable CFC—

“(I) before March 8, 1984, or

“(II) after March 7, 1984, pursuant to a binding commitment in effect on March 7, 1984.

“(3) EXCEPTION FOR CERTAIN TERM OBLIGATIONS.—The amendments made by subsection (a) shall not apply to interest on any term obligations held by a foreign corporation on March 7, 1984. The preceding sentence shall not apply to any United States affiliate obligation (as defined in paragraph (2)(F)) held by an applicable CFC (as defined in paragraph (2)(D)).

“(4) DEFINITIONS.—Any term used in this subsection which is also used in section 904(g) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall have the meaning given such term by such section 904(g).

“(5) SEPARATE APPLICATION OF SECTION 904 IN CASE OF INCOME COVERED BY TRANSITIONAL RULES.—Subsections (a), (b), and (c) of section 904 of the Internal Revenue Code of 1986 shall be applied separately to any amount not treated as income derived from sources within the United States but which (but for the provisions of paragraph (2) or (3) of this subsection) would be so treated under the amendments made by subsection (a). Any such separate application shall be made before any separate application required under section 904(d) of such Code.

“(6) APPLICATION OF PARAGRAPH (5) DELAYED IN CERTAIN CASES.—In the case of a foreign corporation—

“(A) which is a subsidiary of a domestic corporation which has been engaged in manufacturing for more than 50 years, and

“(B) which issued certificates with respect to obligations on—

“(i) September 24, 1979, denominated in French francs,

“(ii) September 10, 1981, denominated in Swiss francs,

“(iii) July 14, 1982, denominated in Swiss francs, and

“(iv) December 1, 1982, denominated in United States dollars,

with a total principal amount of less than 200,000,000 United States dollars.[.]

then paragraph (5) shall not apply to the proceeds from relending such obligations or related capital before January 1, 1986.”

Pub. L. 98-369, div. A, title I, §122(b), July 18, 1984, 98 Stat. 644, provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984].

“(2) SPECIAL RULES FOR INTEREST INCOME.—

“(A) IN GENERAL.—Interest income received or accrued by a designated payor corporation shall be taken into account for purposes of the amendment made by subsection (a) only in taxable years beginning after the date of the enactment of this Act.

“(B) EXCEPTION FOR INVESTMENT AFTER JUNE 22, 1984.—Notwithstanding subparagraph (A), the amendment made by subsection (a) shall apply to interest income received or accrued by a designated payor corporation after the date of enactment of this Act if it is attributable to investment in the designated payor corporation after June 22, 1984.

“(3) TERM OBLIGATIONS OF DESIGNATED PAYOR CORPORATION WHICH IS NOT APPLICABLE CFC.—In the case of

any designated payor corporation which is not an applicable CFC (as defined in section 121(b)(2)(D) [section 121(b)(2)(D) of Pub. L. 98-369, set out above]), any interest received or accrued by such corporation on a term obligation held by such corporation on March 7, 1984, shall not be taken into account.”

Amendment by section 474(r)(21) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 801(d)(2) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, as amended, set out as a note under section 245 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98-21, set out as a note under section 22 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to taxable years beginning after Dec. 31, 1982, except that former subsec. (f)(4), which had provided for the determination of foreign oil related loss where section 907 of this title was applicable, shall continue to apply in certain instances where the taxpayer has had a foreign loss from an activity not related to oil and gas, see section 211(e) of Pub. L. 97-248, set out as a note under section 907 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 403(c)(4) of Pub. L. 95-600 effective on Nov. 6, 1978, see section 403(d)(3) of Pub. L. 95-600, set out as a note under section 528 of this title.

Amendment by section 421(e)(6) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95-600, set out as note under section 5 of this title.

Amendment by section 701(a)(8)(C) of Pub. L. 95-600 applicable, in the case of individuals, to taxable years ending after Dec. 31, 1974, and, in the case of corporations, to taxable years ending after Dec. 31, 1976, see section 701(u)(8)(D) of Pub. L. 95-600, set out as a note under section 907 of this title.

Pub. L. 95-600, title VII, §701(q)(3)(B), Nov. 6, 1978, 92 Stat. 2910, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by paragraph (2) [amending this section] shall take effect as if included in section 904(f) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as such provision was added to such Code by section 1032(a) of the Tax Reform Act of 1976 [section 1032(a) of Pub. L. 94-455].”

Pub. L. 95-600, title VII, §701(u)(2)(D), Nov. 6, 1978, 92 Stat. 2913, provided that: “The amendments made by this paragraph [amending this section] shall apply to taxable years beginning after December 31, 1975.”

Pub. L. 95-600, title VII, §701(u)(3)(B), Nov. 6, 1978, 92 Stat. 2913, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to taxable years beginning after December 31, 1975.”

Pub. L. 95-600, title VII, §701(u)(4)(C), Nov. 6, 1978, 92 Stat. 2914, provided that: “The amendments made by this paragraph [amending this section] shall apply—

- “(i) to overall foreign losses sustained in taxable years beginning after December 31, 1975, and
- “(ii) to foreign oil related losses sustained in taxable years ending after December 31, 1975.”

## 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

Amendment by section 503(b)(1) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94-455, set out as a note under section 3 of this title.

Pub. L. 94-455, title X, §1031(c), Oct. 4, 1976, 90 Stat. 1623, as amended by Pub. L. 95-600, title VII, §701(u)(6), (7)(B)(ii), Nov. 6, 1978, 92 Stat. 2914, 2916; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 243, 383, 901, 907, 960, 1351, 1503, 6038, and 6501 of this title] shall apply to taxable years beginning after December 31, 1975.

“(2) EXCEPTION FOR CERTAIN MINING OPERATIONS.—In the case of a domestic corporation or includible corporation in an affiliated group (as defined in section 1504 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) which has as of October 1, 1975—

“(A) been engaged in the active conduct of the trade or business of the extraction of minerals (of a character with respect to which a deduction for depletion is allowable under section 613 of such Code) outside the United States or its possessions for less than 5 years preceding the date of enactment of this Act [Oct. 4, 1976],

“(B) had deductions properly apportioned or allocated to its gross income from such trade or business in excess of such gross income in at least 2 taxable years,

“(C) 80 percent of its gross receipts are from the sale of such minerals, and

“(D) made commitments for substantial expansion of such mineral extraction activities, the amendments made by this section [amending this section and sections 243, 383, 901, 907, 960, 1351, 1503, 6038, and 6501 of this title] shall apply to taxable years beginning after December 31, 1978. In the case of a loss sustained in a taxable year beginning before January 1, 1979, by any corporation to which this paragraph applies, if section 904(a)(1) of such Code (as in effect before the enactment of this Act [Oct. 4, 1976]) applies with respect to such taxable year, the provisions of section 904(f) of such Code shall be applied with respect to such loss under the principles of such section 904(a)(1).

“(3) EXCEPTION FOR INCOME FROM POSSESSIONS.—In the case of gross income from sources within a possession of the United States (and the deductions properly apportioned or allocated thereto), the amendments made by this section [amending this section and sections 243, 383, 901, 907, 960, 1351, 1503, 6038, and 6501 of this title] shall apply to taxable years beginning after December 31, 1978.

“(4) CARRYBACKS AND CARRYOVERS IN THE CASE OF MINING OPERATIONS AND INCOME FROM A POSSESSION.—In the case of a taxpayer to whom paragraph (2) or (3) of this subsection applies, section 904(e) of such Code [section 904(e) of this title] shall apply except that ‘January 1, 1979’ shall be substituted for ‘January 1, 1976’ each place it appears therein. If such a taxpayer elects the overall limitation for a taxable year beginning before January 1, 1979, such section 904(e) shall be applied by substituting ‘the January 1, of the last year for which such taxpayer is on the per-country limitation’ for ‘January 1, 1976’ each place it appears therein.”

Pub. L. 94-455, title X, §1032(c), Oct. 4, 1976, 90 Stat. 1626, as amended by Pub. L. 95-600, title VII, §701(u)(5), (7)(A), (B)(i), Nov. 6, 1978, 92 Stat. 2914; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as provided in paragraphs (2), (3), and (5), the amendment made by subsection (a) [amending this section] shall apply to losses sustained in taxable years beginning after December 31, 1975. The amendment made by subsection (b)(1) [amending section 907 of this title] shall apply to taxable years beginning after December 31, 1975. The amendment made by subsection (b)(2) [amending section 907 of this title] shall apply to losses sustained in taxable years ending after December 31, 1975.

“(2) OBLIGATIONS OF FOREIGN GOVERNMENTS.—The amendments made by subsection (a) [amending this section] shall not apply to losses on the sale, exchange, or other disposition of bonds, notes, or other evidences of indebtedness issued before May 14, 1976, by a foreign government or instrumentality thereof for the acquisition of property located in that country or stock of a corporation (created or organized in or under the laws of that foreign country) or indebtedness of such corporation.

“(3) SUBSTANTIAL WORTHLESSNESS BEFORE ENACTMENT.—The amendments made by subsection (a) [amending this section] shall not apply to losses incurred on the loss from stock or indebtedness of a corporation in which the taxpayer owned at least 10 percent of the voting stock and which has sustained losses in 3 out of the last 5 taxable years beginning before January 1, 1976, which has sustained an overall loss for those 5 years, and with respect to which the taxpayer has terminated or will terminate all operations by reason of sale, liquidation, or other disposition before January 1, 1977, of such corporation or its assets.

“(4) LIMITATION BASED ON DEFICIT IN EARNINGS AND PROFITS.—If paragraph (3) would apply to a taxpayer but for the fact that the loss is sustained after December 31, 1976, and if the loss is sustained in a taxable year beginning before January 1, 1979, the amendments made by subsection (a) [amending this section] shall not apply to such loss to the extent that there was on December 31, 1975, a deficit in earnings and profits in the corporation from which the loss arose. For purposes of the preceding sentence, there shall be taken into account only earnings and profits of the corporation which (A) were accumulated in taxable years of the corporation beginning after December 31, 1962, and during the period in which the stock of such corporation from which the loss arose was held by the taxpayer and (B) are attributable to such stock.

“(5) FOREIGN OIL RELATED LOSSES.—The amendment made by subsection (a) [amending this section] shall apply to foreign oil related losses sustained in taxable years ending after December 31, 1975.

“(6) RECAPTURE OF POSSESSION LOSSES DURING TRANSITIONAL PERIOD WHERE TAXPAYER IS ON A PER-COUNTRY BASIS.—

“(A) APPLICATION OF PARAGRAPH.—This paragraph shall apply if—

“(i) the taxpayer sustained a loss in a possession of the United States in a taxable year beginning after December 31, 1975, and before January 1, 1979,

“(ii) such loss is attributable to a trade or business engaged in by the taxpayer in such possession on January 1, 1976, and

“(iii) the taxpayer chooses to have the benefits of subpart A of part III of subchapter N apply for such taxable year and section 904(a)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect before the enactment of this Act [Oct. 4, 1976]) applies with respect to such taxable year.

“(B) NO RECAPTURE DURING TRANSITION PERIOD.—In any case to which this paragraph applies, for purposes of determining the liability for tax of the taxpayer for taxable years beginning before January 1, 1979, section 904(f) of the Internal Revenue Code of 1986 shall not apply with respect to the loss described in subparagraph (A)(i).

“(C) RECAPTURE OF LOSS AFTER THE TRANSITION PERIOD.—In any case to which this paragraph applies—

“(i) for purposes of determining the liability for tax of the taxpayer for taxable years beginning

after December 31, 1978, section 904(f) of the Internal Revenue Code of 1986 [subsec. (f) of this section] shall be applied with respect to the loss described in subparagraph (A)(i) under the principles of section 904(a)(1) of such Code (as in effect before the enactment of this Act [Oct. 4, 1976]); but

“(ii) in the case of any taxpayer and any possession, the aggregate amount to which such section 904(f) applies by reason of clause (i) shall not exceed the sum of the net incomes of all affiliated corporations from such possession for taxable years of such affiliated corporations beginning after December 31, 1975, and before January 1, 1979.

“(D) TAXPAYERS NOT ENGAGED IN TRADE OR BUSINESS ON JANUARY 1, 1976.—In any case to which this paragraph applies but for the fact that the taxpayer was not engaged in a trade or business in such possession on January 1, 1976, for purposes of determining the liability for tax of the taxpayer for taxable years beginning before January 1, 1979; if section 904(a)(1) of such Code (as in effect before the enactment of this Act [Oct. 4, 1976]) applies with respect to such taxable year, the provisions of section 904(f) of such Code shall be applied with respect to the loss described in subparagraph (A)(i) under the principles of such section 904(a)(1).

“(E) AFFILIATED CORPORATION DEFINED.—For purposes of subparagraph (C)(ii), the term ‘affiliated corporation’ means a corporation which, for the taxable year for which the net income is being determined, was not a member of the same affiliated group (within the meaning of section 1504 of the Internal Revenue Code of 1986) as the taxpayer but would have been a member of such group but for the application of subsection (b) of such section 1504.”

Pub. L. 94-455, title X, §1034(b), Oct. 4, 1976, 90 Stat. 1630, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975, except that the provisions of section 904(b)(3)(C) shall only apply to sales or exchanges made after November 12, 1975.”

Amendment by section 1051(e) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1975, with certain exceptions, see section 1051(i) of Pub. L. 94-455, set out as a note under section 27 of this title.

Amendment by section 1901(b)(10) of Pub. L. 94-455 applicable with respect to taxable years ending after Oct. 4, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by 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 a note under section 991 of this title.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable with respect to taxable years beginning after Dec. 31, 1969, see section 506(c) of Pub. L. 91-172, set out as a note under section 901 of this title.

#### EFFECTIVE DATE OF 1966 AMENDMENT

Pub. L. 89-809, title I, §106(c)(2), Nov. 13, 1966, 80 Stat. 1571, provided that: “The amendments made by paragraph (1) [amending this section] shall apply to interest received after December 31, 1965, in taxable years ending after such date.”

#### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 234(c) of Pub. L. 88-272, set out as a note under section 1503 of this title.

#### EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87-834, §10(b), Oct. 16, 1962, 76 Stat. 1003, provided that: “The amendments made by subsection (a)

[amending this section] shall apply with respect to taxable years beginning after the date of the enactment of this Act [Oct. 16, 1962], but only with respect to interest resulting from transactions consummated after April 2, 1962.”

#### EFFECTIVE DATE OF 1960 AMENDMENT

Pub. L. 86-780, §4, Sept. 14, 1960, 74 Stat. 1013, provided that: “The amendments made by the first section [amending this section], section 2 [amending section 1503 of this title], and subsection (a) of section 3 of this Act [amending section 901 of this title] shall apply with respect to taxable years beginning after December 31, 1960. The amendment made by subsection (b) of section 3 of this Act [amending section 901 of this title] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. The amendments made by subsection (c) of section 3 of this Act [enacting section 6501 of this title] shall apply with respect to taxable years beginning after December 31, 1957.”

#### EFFECTIVE DATE OF 1958 AMENDMENT

Pub. L. 85-866, title I, §42(c), Sept. 2, 1958, 72 Stat. 1640, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 6611 of this title] shall apply only with respect to taxable years beginning after December 31, 1957.”

#### SAVINGS PROVISION

For provisions that nothing in amendment by section 401(d)(1)(D)(xiii), (xiv) of 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(a)(31) 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.

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

For applicability of amendments by sections 701(e)(4)(H) and 1201(a), (b), (d)(1)-(3) of Pub. L. 99-514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, and for nonapplication of amendment by section 1211(b)(3) of Pub. L. 99-514 to the extent application of such amendment would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(2)-(4) of Pub. L. 100-647, set out as a note under section 861 of this title.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

#### LIMITATION ON CARRYBACK OF FOREIGN TAX CREDITS TO TAXABLE YEARS BEGINNING BEFORE 1987

Pub. L. 99-514, title XII, §1205, Oct. 22, 1986, 100 Stat. 2532, provided that:

“(a) DETERMINATION OF EXCESS CREDITS.—

“(1) IN GENERAL.—Any taxes paid or accrued in a taxable year beginning after 1986 may be treated under section 904(c) of the Internal Revenue Code of 1954 as paid or accrued in a taxable year beginning before 1987 only to the extent such taxes would be so treated if the tax imposed by chapter 1 of such Code for the taxable year beginning after 1986 were determined by applying section 1 or 11 of such Code (as the case may be) as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986].

“(2) ADJUSTMENTS.—Under regulations prescribed by the Secretary of the Treasury or his delegate proper adjustments shall be made in the application of paragraph (1) to take into account—

“(A) the repeal of the zero bracket amount, and

“(B) the changes in the treatment of capital gains.

“(b) COORDINATION WITH SEPARATE BASKETS.—Any taxes paid or accrued in a taxable year beginning after 1986 which (after the application of subsection (a)) are treated as paid or accrued in a taxable year beginning before 1987 shall be treated as imposed on income described in section 904(d)(1)(E) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]). No taxes paid or accrued in a taxable year beginning after 1986 with respect to high withholding tax interest (as defined in section 904(d)(2)(B) of the Internal Revenue Code of 1986 as amended by this Act) may be treated as paid or accrued in a taxable year beginning before 1987.”

COORDINATION WITH TREATY OBLIGATIONS

Pub. L. 99-514, title XVIII, §1810(a)(4), Oct. 22, 1986, 100 Stat. 2822, provided that: “Section 904(g) of the Internal Revenue Code of 1954 shall apply notwithstanding any treaty obligation of the United States to the contrary (whether entered into on, before, or after the date of the enactment of this Act [Oct. 22, 1986]) unless (in the case of a treaty entered into after the date of the enactment of this Act) such treaty by specific reference to such section 904(g) clearly expresses the intent to override the provisions of such section.”

SEPARATE APPLICATION OF SECTION 904 IN CASE OF INCOME COVERED BY TRANSITIONAL RULES

Pub. L. 99-514, title XVIII, §1810(a)(5), Oct. 22, 1986, 100 Stat. 2823, as amended by Pub. L. 100-647, title I, §1018(g)(1), Nov. 10, 1988, 102 Stat. 3582, provided that: “For purposes of section 121(b)(5) of the Tax Reform Act of 1984 [Pub. L. 98-369, set out above] (relating to separate application of section 904 [of the Internal Revenue Code of 1954 [now 1986]] in case of income covered by transitional rules), any carryover under section 904(c) of the Internal Revenue Code of 1954 [now 1986] allowed to a taxpayer which was incorporated on August 31, 1962, attributable to taxes paid or accrued in taxable years beginning in 1981, 1982, 1983, or 1984, with respect to amounts included in gross income under section 951 of such Code in respect of a controlled foreign corporation which was incorporated on May 27, 1977, shall be treated as taxes paid or accrued on income separately treated under such section 121(b)(5).”

**§ 905. Applicable rules**

**(a) Year in which credit taken**

The credits provided in this subpart may, at the option of the taxpayer and irrespective of the method of accounting employed in keeping his books, be taken in the year in which the taxes of the foreign country or the possession of the United States accrued, subject, however, to the conditions prescribed in subsection (c). If the taxpayer elects to take such credits in the year in which the taxes of the foreign country or the possession of the United States accrued, the credits for all subsequent years shall be taken

on the same basis, and no portion of any such taxes shall be allowed as a deduction in the same or any succeeding year.

**(b) Proof of credits**

The credits provided in this subpart shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary—

(1) the total amount of income derived from sources without the United States, determined as provided in part I,

(2) the amount of income derived from each country, the tax paid or accrued to which is claimed as a credit under this subpart, such amount to be determined under regulations prescribed by the Secretary, and

(3) all other information necessary for the verification and computation of such credits.

**(c) Adjustments to accrued taxes**

**(1) In general**

If—

(A) accrued taxes when paid differ from the amounts claimed as credits by the taxpayer,

(B) accrued taxes are not paid before the date 2 years after the close of the taxable year to which such taxes relate, or

(C) any tax paid is refunded in whole or in part,

the taxpayer shall notify the Secretary, who shall redetermine the amount of the tax for the year or years affected.

**(2) Special rule for taxes not paid within 2 years**

**(A) In general**

Except as provided in subparagraph (B), in making the redetermination under paragraph (1), no credit shall be allowed for accrued taxes not paid before the date referred to in subparagraph (B) of paragraph (1).

**(B) Taxes subsequently paid**

Any such taxes if subsequently paid—

(i) shall be taken into account for the taxable year to which such taxes relate, and

(ii) shall be translated as provided in section 986(a)(2)(A).

**(3) Adjustments**

The amount of tax (if any) due on any redetermination under paragraph (1) shall be paid by the taxpayer on notice and demand by the Secretary, and the amount of tax overpaid (if any) shall be credited or refunded to the taxpayer in accordance with subchapter B of chapter 66 (section 6511 et seq.).

**(4) Bond requirements**

In the case of any tax accrued but not paid, the Secretary, as a condition precedent to the allowance of the credit provided in this subpart, may require the taxpayer to give a bond, with sureties satisfactory to and approved by the Secretary, in such sum as the Secretary may require, conditioned on the payment by the taxpayer of any amount of tax found due on any such redetermination. Any such bond shall contain such further conditions as the Secretary may require.