

1975, and to taxable years of United States shareholders (within the meaning of 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94-12, set out as a note under section 954 of this title.

#### EFFECTIVE DATE

Pub. L. 87-834, §12(c), Oct. 16, 1962, 76 Stat. 1031, provided that: “The amendments made by this section [enacting this section and sections 952 to 964 and 970 to 972 of this title and amending sections 901, 904, and 1016 of this title] shall apply with respect to taxable years of foreign corporations beginning after December 31, 1962, and to taxable year of United States shareholders within which or with which such taxable years of such foreign corporations end.”

#### 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.

### § 951A. Global intangible low-taxed income included in gross income of United States shareholders

#### (a) In general

Each person who is a United States shareholder of any controlled foreign corporation for any taxable year of such United States shareholder shall include in gross income such shareholder's global intangible low-taxed income for such taxable year.

#### (b) Global intangible low-taxed income

For purposes of this section—

##### (1) In general

The term “global intangible low-taxed income” means, with respect to any United States shareholder for any taxable year of such United States shareholder, the excess (if any) of—

(A) such shareholder's net CFC tested income for such taxable year, over

(B) such shareholder's net deemed tangible income return for such taxable year.

##### (2) Net deemed tangible income return

The term “net deemed tangible income return” means, with respect to any United States shareholder for any taxable year, the excess of—

(A) 10 percent of the aggregate of such shareholder's pro rata share of the qualified business asset investment of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such taxable year (determined for each taxable year of each such controlled foreign corporation which ends in or with such taxable year of such United States shareholder), over

(B) the amount of interest expense taken into account under subsection (c)(2)(A)(ii) in determining the shareholder's net CFC tested income for the taxable year to the extent the interest income attributable to such expense is not taken into account in deter-

mining such shareholder's net CFC tested income.

#### (c) Net CFC tested income

For purposes of this section—

##### (1) In general

The term “net CFC tested income” means, with respect to any United States shareholder for any taxable year of such United States shareholder, the excess (if any) of—

(A) the aggregate of such shareholder's pro rata share of the tested income of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such taxable year of such United States shareholder (determined for each taxable year of such controlled foreign corporation which ends in or with such taxable year of such United States shareholder), over

(B) the aggregate of such shareholder's pro rata share of the tested loss of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such taxable year of such United States shareholder (determined for each taxable year of such controlled foreign corporation which ends in or with such taxable year of such United States shareholder).

##### (2) Tested income; tested loss

For purposes of this section—

##### (A) Tested income

The term “tested income” means, with respect to any controlled foreign corporation for any taxable year of such controlled foreign corporation, the excess (if any) of—

(i) the gross income of such corporation determined without regard to—

(I) any item of income described in section 952(b),

(II) any gross income taken into account in determining the subpart F income of such corporation,

(III) any gross income excluded from the foreign base company income (as defined in section 954) and the insurance income (as defined in section 953) of such corporation by reason of section 954(b)(4),

(IV) any dividend received from a related person (as defined in section 954(d)(3)), and

(V) any foreign oil and gas extraction income (as defined in section 907(c)(1)) of such corporation, over

(ii) the deductions (including taxes) properly allocable to such gross income under rules similar to the rules of section 954(b)(5) (or to which such deductions would be allocable if there were such gross income).

##### (B) Tested loss

##### (i) In general

The term “tested loss” means, with respect to any controlled foreign corporation for any taxable year of such controlled foreign corporation, the excess (if any) of the amount described in subparagraph (A)(ii)

over the amount described in subparagraph (A)(i).

**(ii) Coordination with subpart F to deny double benefit of losses**

Section 952(c)(1)(A) shall be applied by increasing the earnings and profits of the controlled foreign corporation by the tested loss of such corporation.

**(d) Qualified business asset investment**

For purposes of this section—

**(1) In general**

The term “qualified business asset investment” means, with respect to any controlled foreign corporation for any taxable year, the average of such corporation’s aggregate adjusted bases as of the close of each quarter of such taxable year in specified tangible property—

(A) used in a trade or business of the corporation, and

(B) of a type with respect to which a deduction is allowable under section 167.

**(2) Specified tangible property**

**(A) In general**

The term “specified tangible property” means, except as provided in subparagraph (B), any tangible property used in the production of tested income.

**(B) Dual use property**

In the case of property used both in the production of tested income and income which is not tested income, such property shall be treated as specified tangible property in the same proportion that the gross income described in subsection (c)(1)(A) produced with respect to such property bears to the total gross income produced with respect to such property.

**(3)<sup>1</sup> Determination of adjusted basis**

For purposes of this subsection, notwithstanding any provision of this title (or any other provision of law) which is enacted after the date of the enactment of this section, the adjusted basis in any property shall be determined—

(A) by using the alternative depreciation system under section 168(g), and

(B) by allocating the depreciation deduction with respect to such property ratably to each day during the period in the taxable year to which such depreciation relates.

**(3)<sup>1</sup> Partnership property**

For purposes of this subsection, if a controlled foreign corporation holds an interest in a partnership at the close of such taxable year of the controlled foreign corporation, such controlled foreign corporation shall take into account under paragraph (1) the controlled foreign corporation’s distributive share of the aggregate of the partnership’s adjusted bases (determined as of such date in the hands of the partnership) in tangible property held by such partnership to the extent such property—

(A) is used in the trade or business of the partnership,

(B) is of a type with respect to which a deduction is allowable under section 167, and

(C) is used in the production of tested income (determined with respect to such controlled foreign corporation’s distributive share of income with respect to such property).

For purposes of this paragraph, the controlled foreign corporation’s distributive share of the adjusted basis of any property shall be the controlled foreign corporation’s distributive share of income with respect to such property.

**(4) Regulations**

The Secretary shall issue such regulations or other guidance as the Secretary determines appropriate to prevent the avoidance of the purposes of this subsection, including regulations or other guidance which provide for the treatment of property if—

(A) such property is transferred, or held, temporarily, or

(B) the avoidance of the purposes of this paragraph is a factor in the transfer or holding of such property.

**(e) Determination of pro rata share, etc.**

For purposes of this section—

**(1) In general**

The pro rata shares referred to in subsections (b), (c)(1)(A), and (c)(1)(B), respectively, shall be determined under the rules of section 951(a)(2) in the same manner as such section applies to subpart F income and shall be taken into account in the taxable year of the United States shareholder in which or with which the taxable year of the controlled foreign corporation ends.

**(2) Treatment as United States shareholder**

A person shall be treated as a United States shareholder of a controlled foreign corporation for any taxable year of such person only if such person owns (within the meaning of section 958(a)) stock in such foreign corporation on the last day in the taxable year of such foreign corporation on which such foreign corporation is a controlled foreign corporation.

**(3) Treatment as controlled foreign corporation**

A foreign corporation shall be treated as a controlled foreign corporation for any taxable year if such foreign corporation is a controlled foreign corporation at any time during such taxable year.

**(f) Treatment as subpart F income for certain purposes**

**(1) In general**

**(A) Application**

Except as provided in subparagraph (B), any global intangible low-taxed income included in gross income under subsection (a) shall be treated in the same manner as an amount included under section 951(a)(1)(A) for purposes of applying sections 168(h)(2)(B), 535(b)(10), 851(b), 904(h)(1), 959, 961, 962, 993(a)(1)(E), 996(f)(1), 1248(b)(1), 1248(d)(1), 6501(e)(1)(C), 6654(d)(2)(D), and 6655(e)(4).

**(B) Exception**

The Secretary shall provide rules for the application of subparagraph (A) to other pro-

<sup>1</sup> So in original. There are two pars. designated (3).

visions of this title in any case in which the determination of subpart F income is required to be made at the level of the controlled foreign corporation.

**(2) Allocation of global intangible low-taxed income to controlled foreign corporations**

For purposes of the sections referred to in paragraph (1), with respect to any controlled foreign corporation any pro rata amount from which is taken into account in determining the global intangible low-taxed income included in gross income of a United States shareholder under subsection (a), the portion of such global intangible low-taxed income which is treated as being with respect to such controlled foreign corporation is—

(A) in the case of a controlled foreign corporation with no tested income, zero, and

(B) in the case of a controlled foreign corporation with tested income, the portion of such global intangible low-taxed income which bears the same ratio to such global intangible low-taxed income as—

(i) such United States shareholder's pro rata amount of the tested income of such controlled foreign corporation, bears to

(ii) the aggregate amount described in subsection (c)(1)(A) with respect to such United States shareholder.

(Added Pub. L. 115-97, title I, §14201(a), Dec. 22, 2017, 131 Stat. 2208.)

**Editorial Notes**

**REFERENCES IN TEXT**

The date of the enactment of this section, referred to in subsec. (d)(3), is the date of the enactment of Pub. L. 115-97, which was approved Dec. 22, 2017.

**Statutory Notes and Related Subsidiaries**

**EFFECTIVE DATE**

Section 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 14201(d) of Pub. L. 115-97, set out as an Effective Date of 2017 Amendment note under section 904 of this title.

**§ 952. Subpart F income defined**

**(a) In general**

For purposes of this subpart, the term “subpart F income” means, in the case of any controlled foreign corporation, the sum of—

(1) insurance income (as defined under section 953),

(2) the foreign base company income (as determined under section 954),

(3) an amount equal to the product of—

(A) the income of such corporation other than income which—

(i) is attributable to earnings and profits of the foreign corporation included in the gross income of a United States person under section 951 (other than by reason of this paragraph), or

(ii) is described in subsection (b),

multiplied by

(B) the international boycott factor (as determined under section 999),

(4) the sum of the amounts of any illegal bribes, kickbacks, or other payments (within the meaning of section 162(c)) paid by or on behalf of the corporation directly or indirectly to an official, employee, or agent in fact of a government, and

(5) the income of such corporation derived from any foreign country during any period during which section 901(j) applies to such foreign country.

The payments referred to in paragraph (4) are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person. For purposes of paragraph (5), the income described therein shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income.

**(b) Exclusion of United States income**

In the case of a controlled foreign corporation, subpart F income does not include any item of income from sources within the United States which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States. For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account.

**(c) Limitation**

**(1) In general**

**(A) Subpart F income limited to current earnings and profits**

For purposes of subsection (a), the subpart F income of any controlled foreign corporation for any taxable year shall not exceed the earnings and profits of such corporation for such taxable year.

**(B) Certain prior year deficits may be taken into account**

**(i) In general**

The amount included in the gross income of any United States shareholder under section 951(a)(1)(A) for any taxable year and attributable to a qualified activity shall be reduced by the amount of such shareholder's pro rata share of any qualified deficit.

**(ii) Qualified deficit**

The term “qualified deficit” means any deficit in earnings and profits of the controlled foreign corporation for any prior taxable year which began after December 31, 1986, and for which the controlled foreign corporation was a controlled foreign corporation; but only to the extent such deficit—

(I) is attributable to the same qualified activity as the activity giving rise to the income being offset, and

(II) has not previously been taken into account under this subparagraph.

In determining the deficit attributable to qualified activities described in subclause