

Pub. L. 94-455, title X, §1066(b), Oct. 4, 1976, 90 Stat. 1654, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by section 1065 [amending this section and sections 995 and 964 of this title] apply to payments described in section 162(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made more than 30 days after the date of enactment of this Act [Oct. 4, 1976]."

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

DETERMINATION OF CORPORATE EARNINGS AND PROFITS FOR PURPOSES OF APPLYING SUBSECTION (c)(1)(A)

Pub. L. 100-647, title I, §1012(i)(6), Nov. 10, 1988, 102 Stat. 3508, provided that: "For purposes of applying section 952(c)(1)(A) of the 1986 Code, the earnings and profits of any corporation shall be determined without regard to any increase in earnings and profits under section 1023(e)(3)(C) of the Reform Act [Pub. L. 99-514, set out as an Effective Date note under section 846 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.

§ 953. Insurance income

(a) Insurance income

(1) In general

For purposes of section 952(a)(1), the term "insurance income" means any income which—

(A) is attributable to the issuing (or reinsuring) of an insurance or annuity contract, and

(B) would (subject to the modifications provided by subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance company.

(2) Exception

Such term shall not include any exempt insurance income (as defined in subsection (e)).

(b) Special rules

For purposes of subsection (a)—

(1) The following provisions of subchapter L shall not apply:

(A) So much of section 805(a)(8) as relates to the deduction allowed under section 172.

(B) Section 832(c)(5) (relating to certain capital losses).

(2) The items referred to in—

(A) section 803(a)(1) (relating to gross amount of premiums and other considerations),

(B) section 803(a)(2) (relating to net decrease in reserves),

(C) section 805(a)(2) (relating to net increase in reserves), and

(D) section 832(b)(4) (relating to premiums earned on insurance contracts),

shall be taken into account only to the extent they are in respect of any reinsurance or the issuing of any insurance or annuity contract described in subsection (a)(1).

(3) Reserves for any insurance or annuity contract shall be determined in the same manner as under section 954(i).

(4) All items of income, expenses, losses, and deductions shall be properly allocated or apportioned under regulations prescribed by the Secretary.

(c) Special rule for certain captive insurance companies

(1) In general

For purposes only of taking into account related person insurance income—

(A) the term "United States shareholder" means, with respect to any foreign corporation, a United States person (as defined in section 957(c)) who owns (within the meaning of section 958(a)) any stock of the foreign corporation,

(B) the term "controlled foreign corporation" has the meaning given to such term by section 957(a) determined by substituting "25 percent or more" for "more than 50 percent", and

(C) the pro rata share referred to in section 951(a)(1)(A) shall be determined under paragraph (5) of this subsection.

(2) Related person insurance income

For purposes of this subsection, the term "related person insurance income" means any insurance income (within the meaning of subsection (a)) attributable to a policy of insurance or reinsurance with respect to which the person (directly or indirectly) insured is a United States shareholder in the foreign corporation or a related person to such a shareholder.

(3) Exceptions

(A) Corporations not held by insureds

Paragraph (1) shall not apply to any foreign corporation if at all times during the taxable year of such foreign corporation—

(i) less than 20 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and

(ii) less than 20 percent of the total value of such corporation,

is owned (directly or indirectly under the principles of section 883(c)(4)) by persons who are (directly or indirectly) insured under any policy of insurance or reinsurance issued by such corporation or who are related persons to any such person.

(B) De minimis exception

Paragraph (1) shall not apply to any foreign corporation for a taxable year of such corporation if the related person insurance income (determined on a gross basis) of such corporation for such taxable year is less than 20 percent of its insurance income (as so determined) for such taxable year determined without regard to those provisions of subsection (a)(1) which limit insurance income to income from countries other than

the country in which the corporation was created or organized.

(C) Election to treat income as effectively connected

Paragraph (1) shall not apply to any foreign corporation for any taxable year if—

(i) such corporation elects (at such time and in such manner as the Secretary may prescribe)—

(I) to treat its related person insurance income for such taxable year as income effectively connected with the conduct of a trade or business in the United States, and

(II) to waive all benefits (other than with respect to section 884) with respect to related person insurance income granted by the United States under any treaty between the United States and any foreign country, and

(ii) such corporation meets such requirements as the Secretary shall prescribe to ensure that the tax imposed by this chapter on such income is paid.

An election under this subparagraph made for any taxable year shall not be effective if the corporation (or any predecessor thereof) was a disqualified corporation for the taxable year for which the election was made or for any prior taxable year beginning after 1986.

(D) Special rules for subparagraph (C)

(i) Period during which election in effect

(I) In general

Except as provided in subclause (II), any election under subparagraph (C) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(II) Termination

If a foreign corporation which made an election under subparagraph (C) for any taxable year is a disqualified corporation for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

(ii) Exemption from tax imposed by section 4371

The tax imposed by section 4371 shall not apply with respect to any related person insurance income treated as effectively connected with the conduct of a trade or business within the United States under subparagraph (C).

(E) Disqualified corporation

For purposes of this paragraph the term “disqualified corporation” means, with respect to any taxable year, any foreign corporation which is a controlled foreign corporation for an uninterrupted period of 30 days or more during such taxable year (determined without regard to this subsection) but only if a United States shareholder (determined without regard to this subsection)

owns (within the meaning of section 958(a)) stock in such corporation at some time during such taxable year.

(4) Treatment of mutual insurance companies

In the case of a mutual insurance company—

(A) this subsection shall apply,

(B) policyholders of such company shall be treated as shareholders, and

(C) appropriate adjustments in the application of this subpart shall be made under regulations prescribed by the Secretary.

(5) Determination of pro rata share

(A) In general

The pro rata share determined under this paragraph for any United States shareholder is the lesser of—

(i) the amount which would be determined under paragraph (2) of section 951(a) if—

(I) only related person insurance income were taken into account,

(II) stock owned (within the meaning of section 958(a)) by United States shareholders on the last day of the taxable year were the only stock in the foreign corporation, and

(III) only distributions received by United States shareholders were taken into account under subparagraph (B) of such paragraph (2), or

(ii) the amount which would be determined under paragraph (2) of section 951(a) if the entire earnings and profits of the foreign corporation for the taxable year were subpart F income.

(B) Coordination with other provisions

The Secretary shall prescribe regulations providing for such modifications to the provisions of this subpart as may be necessary or appropriate by reason of subparagraph (A).

(6) Related person

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), the term “related person” has the meaning given such term by section 954(d)(3).

(B) Treatment of certain liability insurance policies

In the case of any policy of insurance covering liability arising from services performed as a director, officer, or employee of a corporation or as a partner or employee of a partnership, the person performing such services and the entity for which such services are performed shall be treated as related persons.

(7) Coordination with section 1248

For purposes of section 1248, if any person is (or would be but for paragraph (3)) treated under paragraph (1) as a United States shareholder with respect to any foreign corporation which would be taxed under subchapter L if it were a domestic corporation and which is (or would be but for paragraph (3)) treated under paragraph (1) as a controlled foreign corporation—

(A) such person shall be treated as meeting the stock ownership requirements of section 1248(a)(2) with respect to such foreign corporation, and

(B) such foreign corporation shall be treated as a controlled foreign corporation.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including—

(A) regulations preventing the avoidance of this subsection through cross insurance arrangements or otherwise, and

(B) regulations which may provide that a person will not be treated as a United States shareholder under paragraph (1) with respect to any foreign corporation if neither such person (nor any related person to such person) is (directly or indirectly) insured under any policy of insurance or reinsurance issued by such foreign corporation.

(d) Election by foreign insurance company to be treated as domestic corporation

(1) In general

If—

(A) a foreign corporation is a controlled foreign corporation (as defined in section 957(a) by substituting “25 percent or more” for “more than 50 percent” and by using the definition of United States shareholder under 953(c)(1)(A)),

(B) such foreign corporation would qualify under part I or II of subchapter L for the taxable year if it were a domestic corporation,

(C) such foreign corporation meets such requirements as the Secretary shall prescribe to ensure that the taxes imposed by this chapter on such foreign corporation are paid, and

(D) such foreign corporation makes an election to have this paragraph apply and waives all benefits to such corporation granted by the United States under any treaty,

for purposes of this title, such corporation shall be treated as a domestic corporation.

(2) Period during which election is in effect

(A) In general

Except as provided in subparagraph (B), an election under paragraph (1) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(B) Termination

If a corporation which made an election under paragraph (1) for any taxable year fails to meet the requirements of subparagraphs (A), (B), and (C), of paragraph (1) for any subsequent taxable year, such election shall not apply to any taxable year beginning after such subsequent taxable year.

(3) Treatment of losses

If any corporation treated as a domestic corporation under this subsection is treated as a member of an affiliated group for purposes of chapter 6 (relating to consolidated returns),

any loss of such corporation shall be treated as a dual consolidated loss for purposes of section 1503(d) without regard to paragraph (2)(B) thereof.

(4) Effect of election

(A) In general

For purposes of section 367, any foreign corporation making an election under paragraph (1) shall be treated as transferring (as of the 1st day of the 1st taxable year to which such election applies) all of its assets to a domestic corporation in connection with an exchange to which section 354 applies.

(B) Exception for pre-1988 earnings and profit

(i) In general

Earnings and profits of the foreign corporation accumulated in taxable years beginning before January 1, 1988, shall not be included in the gross income of the persons holding stock in such corporation by reason of subparagraph (A).

(ii) Treatment of distributions

For purposes of this title, any distribution made by a corporation to which an election under paragraph (1) applies out of earnings and profits accumulated in taxable years beginning before January 1, 1988, shall be treated as a distribution made by a foreign corporation.

(iii) Certain rules to continue to apply to pre-1988 earnings

The provisions specified in clause (iv) shall be applied without regard to paragraph (1), except that, in the case of a corporation to which an election under paragraph (1) applies, only earnings and profits accumulated in taxable years beginning before January 1, 1988, shall be taken into account.

(iv) Specified provisions

The provisions specified in this clause are:

(I) Section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporations).

(II) Subpart F of part III of subchapter N to the extent such subpart relates to earnings invested in United States property.

(III) Section 884 to the extent the foreign corporation reinvested 1987 earnings and profits in United States assets.

(5) Effect of termination

For purposes of section 367, if—

(A) an election is made by a corporation under paragraph (1) for any taxable year, and

(B) such election ceases to apply for any subsequent taxable year,

such corporation shall be treated as a domestic corporation transferring (as of the 1st day of such subsequent taxable year) all of its property to a foreign corporation in connection with an exchange to which section 354 applies.

(6) Additional tax on corporation making election**(A) In general**

If a corporation makes an election under paragraph (1), the amount of tax imposed by this chapter for the 1st taxable year to which such election applies shall be increased by the amount determined under subparagraph (B).

(B) Amount of tax

The amount of tax determined under this paragraph shall be equal to the lesser of—

- (i) $\frac{3}{4}$ of 1 percent of the aggregate amount of capital and accumulated surplus of the corporation as of December 31, 1987, or
- (ii) \$1,500,000.

(e) Exempt insurance income

For purposes of this section—

(1) Exempt insurance income defined**(A) In general**

The term “exempt insurance income” means income derived by a qualifying insurance company which—

- (i) is attributable to the issuing (or reinsuring) of an exempt contract by such company or a qualifying insurance company branch of such company, and
- (ii) is treated as earned by such company or branch in its home country for purposes of such country’s tax laws.

(B) Exception for certain arrangements

Such term shall not include income attributable to the issuing (or reinsuring) of an exempt contract as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect of issuing (or reinsuring) a contract which is not an exempt contract.

(C) Determinations made separately

For purposes of this subsection and section 954(i), the exempt insurance income and exempt contracts of a qualifying insurance company or any qualifying insurance company branch of such company shall be determined separately for such company and each such branch by taking into account—

- (i) in the case of the qualifying insurance company, only items of income, deduction, gain, or loss, and activities of such company not properly allocable or attributable to any qualifying insurance company branch of such company, and
- (ii) in the case of a qualifying insurance company branch, only items of income, deduction, gain, or loss and activities properly allocable or attributable to such branch.

(2) Exempt contract**(A) In general**

The term “exempt contract” means an insurance or annuity contract issued or reinsured by a qualifying insurance company or qualifying insurance company branch in connection with property in, liability arising

out of activity in, or the lives or health of residents of, a country other than the United States.

(B) Minimum home country income required**(i) In general**

No contract of a qualifying insurance company or of a qualifying insurance company branch shall be treated as an exempt contract unless such company or branch derives more than 30 percent of its net written premiums from exempt contracts (determined without regard to this subparagraph)—

- (I) which cover applicable home country risks, and
- (II) with respect to which no policyholder, insured, annuitant, or beneficiary is a related person (as defined in section 954(d)(3)).

(ii) Applicable home country risks

The term “applicable home country risks” means risks in connection with property in, liability arising out of activity in, or the lives or health of residents of, the home country of the qualifying insurance company or qualifying insurance company branch, as the case may be, issuing or reinsuring the contract covering the risks.

(C) Substantial activity requirements for cross border risks

A contract issued by a qualifying insurance company or qualifying insurance company branch which covers risks other than applicable home country risks (as defined in subparagraph (B)(ii)) shall not be treated as an exempt contract unless such company or branch, as the case may be—

- (i) conducts substantial activity with respect to an insurance business in its home country, and
- (ii) performs in its home country substantially all of the activities necessary to give rise to the income generated by such contract.

(3) Qualifying insurance company

The term “qualifying insurance company” means any controlled foreign corporation which—

(A) is subject to regulation as an insurance (or reinsurance) company by its home country, and is licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3)) in such home country,

(B) derives more than 50 percent of its aggregate net written premiums from the issuance or reinsurance by such controlled foreign corporation and each of its qualifying insurance company branches of contracts—

- (i) covering applicable home country risks (as defined in paragraph (2)) of such corporation or branch, as the case may be, and

(ii) with respect to which no policyholder, insured, annuitant, or beneficiary is a related person (as defined in section 954(d)(3)),

except that in the case of a branch, such premiums shall only be taken into account to the extent such premiums are treated as earned by such branch in its home country for purposes of such country's tax laws, and

(C) is engaged in the insurance business and would be subject to tax under chapter L if it were a domestic corporation.

(4) Qualifying insurance company branch

The term “qualifying insurance company branch” means a qualified business unit (within the meaning of section 989(a)) of a controlled foreign corporation if—

(A) such unit is licensed, authorized, or regulated by the applicable insurance regulatory body for its home country to sell insurance, reinsurance, or annuity contracts to persons other than related persons (within the meaning of section 954(d)(3)) in such home country, and

(B) such controlled foreign corporation is a qualifying insurance company, determined under paragraph (3) as if such unit were a qualifying insurance company branch.

(5) Life insurance or annuity contract

For purposes of this section and section 954, the determination of whether a contract issued by a controlled foreign corporation or a qualified business unit (within the meaning of section 989(a)) is a life insurance contract or an annuity contract shall be made without regard to sections 72(s), 101(f), 817(h), and 7702 if—

(A) such contract is regulated as a life insurance or annuity contract by the corporation's or unit's home country, and

(B) no policyholder, insured, annuitant, or beneficiary with respect to the contract is a United States person.

(6) Home country

For purposes of this subsection, except as provided in regulations—

(A) Controlled foreign corporation

The term “home country” means, with respect to a controlled foreign corporation, the country in which such corporation is created or organized.

(B) Qualified business unit

The term “home country” means, with respect to a qualified business unit (as defined in section 989(a)), the country in which the principal office of such unit is located and in which such unit is licensed, authorized, or regulated by the applicable insurance regulatory body to sell insurance, reinsurance, or annuity contracts to persons other than related persons (as defined in section 954(d)(3)) in such country.

(7) Anti-abuse rules

For purposes of applying this subsection and section 954(i)—

(A) the rules of section 954(h)(7) (other than subparagraph (B) thereof) shall apply,

(B) there shall be disregarded any item of income, gain, loss, or deduction of, or derived from, an entity which is not engaged in regular and continuous transactions with persons which are not related persons,

(C) there shall be disregarded any change in the method of computing reserves a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of this subsection or section 954(i),

(D) a contract of insurance or reinsurance shall not be treated as an exempt contract (and premiums from such contract shall not be taken into account for purposes of paragraph (2)(B) or (3)) if—

(i) any policyholder, insured, annuitant, or beneficiary is a resident of the United States and such contract was marketed to such resident and was written to cover a risk outside the United States, or

(ii) the contract covers risks located within and without the United States and the qualifying insurance company or qualifying insurance company branch does not maintain such contemporaneous records, and file such reports, with respect to such contract as the Secretary may require,

(E) the Secretary may prescribe rules for the allocation of contracts (and income from contracts) among 2 or more qualifying insurance company branches of a qualifying insurance company in order to clearly reflect the income of such branches, and

(F) premiums from a contract shall not be taken into account for purposes of paragraph (2)(B) or (3) if such contract reinsures a contract issued or reinsured by a related person (as defined in section 954(d)(3)).

For purposes of subparagraph (D), the determination of where risks are located shall be made under the principles of section 953.

(8) Coordination with subsection (c)

In determining insurance income for purposes of subsection (c), exempt insurance income shall not include income derived from exempt contracts which cover risks other than applicable home country risks.

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection and section 954(i).

(10) Cross reference

For income exempt from foreign personal holding company income, see section 954(i).

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1008; amended Pub. L. 89-809, title I, §104(m)(2), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title II, §211(b)(13), July 18, 1984, 98 Stat. 755; Pub. L. 99-514, title XII, §1221(b)(1), (2), (3)(D), Oct. 22, 1986, 100 Stat. 2551, 2553; Pub. L. 100-647, title I, §1012(i)(1)-(3)(B), (4), (5), (7)-(9), (21), title VI, §6135(a), Nov. 10, 1988, 102 Stat. 3507-3509, 3511, 3721; Pub. L. 101-239, title VII, §7816(p), Dec. 19, 1989, 103 Stat. 2423; Pub. L. 105-277, div. J, title

I, §1005(b)(1), (3), Oct. 21, 1998, 112 Stat. 2681–893, 2681–899; Pub. L. 106–170, title V, § 503(a), (b), Dec. 17, 1999, 113 Stat. 1921; Pub. L. 107–147, title VI, § 614(a)(1), Mar. 9, 2002, 116 Stat. 61; Pub. L. 109–222, title I, § 103(a)(1), May 17, 2006, 120 Stat. 346; Pub. L. 110–343, div. C, title III, § 303(a), Oct. 3, 2008, 122 Stat. 3866; Pub. L. 111–312, title VII, § 750(a), (b), Dec. 17, 2010, 124 Stat. 3320; Pub. L. 112–240, title III, § 322(a), Jan. 2, 2013, 126 Stat. 2332; Pub. L. 113–295, div. A, title I, § 134(a), Dec. 19, 2014, 128 Stat. 4019; Pub. L. 114–113, div. Q, title I, § 128(a), Dec. 18, 2015, 129 Stat. 3054; Pub. L. 115–97, title I, §§ 13511(b)(7), 13512(b)(8), 14212(b)(1)(D), (3), Dec. 22, 2017, 131 Stat. 2142, 2143, 2217.)

Editorial Notes

AMENDMENTS

2017—Subsec. (b)(1)(A). Pub. L. 115–97, § 13512(b)(8), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: “The small life insurance company deduction.”

Subsec. (b)(1)(B). Pub. L. 115–97, § 13512(b)(8), redesignated subpar. (C) as (B). Former subpar. (B) redesignated (A).

Pub. L. 115–97, § 13511(b)(7), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “Section 805(a)(5) (relating to operations loss deduction).”

Subsec. (b)(1)(C). Pub. L. 115–97, § 13512(b)(8), redesignated subpar. (C) as (B).

Subsec. (c)(1)(C). Pub. L. 115–97, § 14212(b)(1)(D), substituted “section 951(a)(1)(A)” for “section 951(a)(1)(A)(i)”.

Subsec. (d)(4)(B)(iv)(II). Pub. L. 115–97, § 14212(b)(3), struck out before period at end “or amounts referred to in clause (ii) or (iii) of section 951(a)(1)(A)”.

2015—Subsec. (e)(10), (11). Pub. L. 114–113 redesignated par. (11) as (10) and struck out former par. (10). Prior to amendment, text of par. (10) read as follows: “This subsection and section 954(i) shall apply only to taxable years of a foreign corporation beginning after December 31, 1998, and before January 1, 2015, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends. If this subsection does not apply to a taxable year of a foreign corporation beginning after December 31, 2014 (and taxable years of United States shareholders ending with or within such taxable year), then, notwithstanding the preceding sentence, subsection (a) shall be applied to such taxable years in the same manner as it would if the taxable year of the foreign corporation began in 1998.”

2014—Subsec. (e)(10). Pub. L. 113–295 substituted “January 1, 2015” for “January 1, 2014” and “December 31, 2014” for “December 31, 2013”.

2013—Subsec. (e)(10). Pub. L. 112–240 substituted “January 1, 2014” for “January 1, 2012” and “December 31, 2013” for “December 31, 2011”.

2010—Subsec. (e)(10). Pub. L. 111–312 substituted “January 1, 2012” for “January 1, 2010” and “December 31, 2011” for “December 31, 2009”.

2008—Subsec. (e)(10). Pub. L. 110–343 substituted “January 1, 2010” for “January 1, 2009” and “December 31, 2009” for “December 31, 2008”.

2006—Subsec. (e)(10). Pub. L. 109–222 substituted “January 1, 2009” for “January 1, 2007” and “December 31, 2008” for “December 31, 2006”.

2002—Subsec. (e)(10). Pub. L. 107–147 substituted “January 1, 2007” for “January 1, 2002” and “December 31, 2006” for “December 31, 2001”.

1999—Subsec. (e)(10). Pub. L. 106–170 substituted “taxable years” for “the first taxable year”, “January 1, 2002” for “January 1, 2000”, and “within which any such” for “within which such”, and inserted at end “If this subsection does not apply to a taxable year of a

foreign corporation beginning after December 31, 2001 (and taxable years of United States shareholders ending with or within such taxable year), then, notwithstanding the preceding sentence, subsection (a) shall be applied to such taxable years in the same manner as it would if the taxable year of the foreign corporation began in 1998.”

1998—Subsec. (a). Pub. L. 105–277, § 1005(b)(1)(A), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “For purposes of section 952(a)(1), the term ‘insurance income’ means any income which—

“(1) is attributable to the issuing (or reinsuring) of any insurance or annuity contract—

“(A) in connection with property in, liability arising out of activity in, or in connection with the lives or health of residents of, a country other than the country under the laws of which the controlled foreign corporation is created or organized, or

“(B) in connection with risks not described in subparagraph (A) as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect of issuing (or reinsuring) a contract described in subparagraph (A), and

“(2) would (subject to the modifications provided by paragraphs (1) and (2) of subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance company.” Subsec. (b)(3), (4). Pub. L. 105–277, § 1005(b)(3), added par. (3) and redesignated former par. (3) as (4).

Subsec. (e). Pub. L. 105–277, § 1005(b)(1)(B), added subsec. (e).

1989—Subsec. (d)(3). Pub. L. 101–239 substituted “for purposes of section 1503(d) without regard to paragraph (2)(B) thereof” for “(as defined in section 1503(d))”.

1988—Subsec. (b)(1). Pub. L. 100–647, § 1012(i)(7)(A), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: “A corporation which would, if it were a domestic insurance corporation, be taxable under part II of subchapter L shall apply subsection (a) as if it were taxable under part III of subchapter L.”

Subsec. (b)(1)(A). Pub. L. 100–647, § 1012(i)(7)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: “The special life insurance company deduction and the small life insurance company deduction.”

Subsec. (b)(2) to (4). Pub. L. 100–647, § 1012(i)(7)(A), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out “(other than those taken into account under paragraph (3))” after “and deductions” in par. (3). Former par. (2) redesignated (1).

Subsec. (c)(1)(C). Pub. L. 100–647, § 1012(i)(2)(A), added subpar. (C).

Subsec. (c)(2). Pub. L. 100–647, § 1012(i)(3)(A), (4)(B), (5), substituted “insurance income (within the meaning of subsection (a)) attributable” for “insurance income attributable”, “with respect to which the person (directly or indirectly) insured is” for “with respect to which the primary insured is”, and “related person” for “related person (within the meaning of section 954(d)(3))”.

Subsec. (c)(3)(A). Pub. L. 100–647, § 1012(i)(3)(B), (4)(B), substituted “persons who are (directly or indirectly) insured” for “persons who are the primary insured” and “to any such person” for “(within the meaning of section 954(d)(3) to any such primary insured”.

Subsec. (c)(3)(B). Pub. L. 100–647, § 1012(i)(8), substituted “related person insurance income (determined on a gross basis)” for “related person insurance income” and “its insurance income (as so determined)” for “its insurance income”.

Subsec. (c)(3)(C). Pub. L. 100–647, § 1012(i)(1)(A), (9), substituted “all benefits (other than with respect to section 884)” for “all benefits” and “granted by the United States under any treaty” for “under any income tax treaty” in cl. (i)(II) and inserted at end “An election under this subparagraph made for any taxable year shall not be effective if the corporation (or any predecessor thereof) was a disqualified corporation for the taxable year for which the election was made or for any prior taxable year beginning after 1986.”

Subsec. (c)(3)(D)(i). Pub. L. 100-647, § 1012(i)(1)(B), substituted “Period during which election in effect” for “Election irrevocable” in heading and amended text generally. Prior to amendment, text read as follows: “Any election under subparagraph (C) shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.”

Subsec. (c)(3)(E). Pub. L. 100-647, § 1012(i)(1)(C), added subpar. (E).

Subsec. (c)(5). Pub. L. 100-647, § 1012(i)(2)(B), added par. (5) and redesignated former par. (5) as (6).

Subsec. (c)(6). Pub. L. 100-647, § 1012(i)(4)(A), added par. (6) and redesignated former par. (6) as (7).

Pub. L. 100-647, § 1012(i)(2)(B), redesignated former par. (5) as (6).

Subsec. (c)(7). Pub. L. 100-647, § 1012(i)(21), added par. (7) and struck out former par. (7) “Regulations”, which read as follows: “The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations preventing the avoidance of this subsection through cross insurance arrangements or otherwise.”

Pub. L. 100-647, § 1012(i)(4)(A), redesignated former par. (6) as (7).

Subsec. (c)(8). Pub. L. 100-647, § 1012(i)(21), added par. (8).

Subsec. (d). Pub. L. 100-647, § 6135(a), added subsec. (d). 1986—Pub. L. 99-514, § 1221(b)(3)(D), substituted “Insurance income” for “Income from insurance of United States risks” in section catchline.

Subsec. (a). Pub. L. 99-514, § 1221(b)(1), amended subsec. (a) generally, substituting provisions defining “insurance income” for former provisions defining “income derived from the insurance of United States risks”.

Subsec. (c). Pub. L. 99-514, § 1221(b)(2), added subsec. (c).

1984—Subsec. (a)(2). Pub. L. 98-369, § 211(b)(13)(D), substituted “and (2)” for “, (2), and (3)”.

Subsec. (b)(1). Pub. L. 98-369, § 211(b)(13)(A), redesignated par. (2) as (1). Former par. (1), which provided that the application of part I of subchapter L of this chapter, life insurance company taxable income was the gain from operations as defined in section 809(b), was struck out.

Subsec. (b)(2). Pub. L. 98-369, § 211(b)(13)(B), in amending par. (2) generally, substituted

“(A) The special life insurance company deduction and the small life insurance company deduction.

“(B) Section 805(a)(5) (relating to operations loss deduction).

“(C) Section 832(c)(5) (relating to certain capital losses).”

for

“(A) Section 809(d)(4) (operations loss deduction).

“(B) Section 809(d)(5) (certain nonparticipating contracts).

“(C) Section 809(d)(6) (group life, accident, and health insurance).”

and struck out

“(D) Section 809(d)(10) (small business deduction).

“(E) Section 817(b) (gain on property held on December 31, 1958, and certain substituted property acquired after 1958).

“(F) Section 832(c)(5) (certain capital losses).”

Pub. L. 98-369, § 211(b)(13)(A), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (b)(3). Pub. L. 98-369, § 211(b)(13)(A), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (b)(3)(A). Pub. L. 98-369, § 211(b)(13)(C)(i), substituted “section 803(a)(1)” for “section 809(c)(1)”.

Subsec. (b)(3)(B). Pub. L. 98-369, § 211(b)(13)(C)(ii), substituted “section 803(a)(2)” for “section 809(c)(2)”.

Subsec. (b)(3)(C). Pub. L. 98-369, § 211(b)(13)(C)(iii), substituted “section 805(a)(2)” for “section 809(d)(2)”.

Subsec. (b)(4), (5). Pub. L. 98-369, § 211(b)(13)(A), (E), redesignated par. (5) as (4) and substituted “paragraph (3)” for “paragraph (4)”. Former par. (4) redesignated (3).

1976—Subsec. (b)(5). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1966—Subsec. (b)(3)(F). Pub. L. 89-809 substituted “832(c)(5)” for “832(b)(5)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 13511(b)(7) of Pub. L. 115-97 applicable to losses arising in taxable years beginning after Dec. 31, 2017, see section 13511(c) of Pub. L. 115-97, set out as a note under section 381 of this title.

Amendment by section 13512(b)(8) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 13512(c) of Pub. L. 115-97, set out as a note under section 453B of this title.

Amendment by section 14212(b)(1)(D), (3) 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 14212(c) of Pub. L. 115-97, set out as a note under section 851 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title I, § 128(c), Dec. 18, 2015, 129 Stat. 3054, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2014, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.”

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. A, title I, § 134(c), Dec. 19, 2014, 128 Stat. 4019, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2013, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.”

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-240, title III, § 322(c), Jan. 2, 2013, 126 Stat. 2332, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2011, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.”

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title VII, § 750(c), Dec. 17, 2010, 124 Stat. 3320, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.”

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-147, title VI, § 614(c), Mar. 9, 2002, 116 Stat. 62, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years beginning after December 31, 2001.”

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-170, title V, § 503(c), Dec. 17, 1999, 113 Stat. 1921, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years beginning after December 31, 1999.”

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of

the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1012(i)(3)(C), Nov. 10, 1988, 102 Stat. 3508, provided that: "The amendments made by this paragraph [amending this section] to the extent such amendments add the phrase '(directly or indirectly)' shall apply only to taxable years beginning after December 31, 1987."

Amendment by section 1012(i)(1), (2), (4), (5), (7)-(9), (21) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Pub. L. 100-647, title VI, §6135(b), Nov. 10, 1988, 102 Stat. 3723, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99-514, set out as a note under section 954 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

§ 954. Foreign base company income

(a) Foreign base company income

For purposes of section 952(a)(2), the term "foreign base company income" means for any taxable year the sum of—

- (1) the foreign personal holding company income for the taxable year (determined under subsection (c) and reduced as provided in subsection (b)(5)),
- (2) the foreign base company sales income for the taxable year (determined under subsection (d) and reduced as provided in subsection (b)(5)), and
- (3) the foreign base company services income for the taxable year (determined under subsection (e) and reduced as provided in subsection (b)(5)).

(b) Exclusion and special rules

[(1) Repealed. Pub. L. 94-12, title VI, § 602(c)(1), Mar. 29, 1975, 89 Stat. 58]

[(2) Repealed. Pub. L. 99-514, title XII, § 1221(c)(1), Oct. 22, 1986, 100 Stat. 2553]

(3) De minimis, etc., rules

For purposes of subsection (a) and section 953—

(A) De minimis rule

If the sum of foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year is less than the lesser of—

- (i) 5 percent of gross income, or
- (ii) \$1,000,000,

no part of the gross income for the taxable year shall be treated as foreign base company income or insurance income.

(B) Foreign base company income and insurance income in excess of 70 percent of gross income

If the sum of the foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year exceeds 70 percent of gross income, the entire gross income for the taxable year shall, subject to the provisions of paragraphs (4) and (5), be treated as foreign base company income or insurance income (whichever is appropriate).

(C) Gross insurance income

For purposes of subparagraphs (A) and (B), the term "gross insurance income" means any item of gross income taken into account in determining insurance income under section 953.

(4) Exception for certain income subject to high foreign taxes

For purposes of subsection (a) and section 953, foreign base company income and insurance income shall not include any item of income received by a controlled foreign corporation if the taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11.

(5) Deductions to be taken into account

For purposes of subsection (a), the foreign personal holding company income, the foreign base company sales income, and the foreign base company services income shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income. Except to the extent provided in regulations prescribed by the Secretary, any interest which is paid or accrued by the controlled foreign corporation to any United States shareholder in such corporation (or any controlled foreign corporation related to such a shareholder) shall be allocated first to foreign personal holding company income which is passive income (within the meaning of section 904(d)(2)) of such corporation to the extent thereof. The Secretary may, by regulations, provide that the preceding sentence shall apply also to interest paid or accrued to other persons.

(c) Foreign personal holding company income

(1) In general

For purposes of subsection (a)(1), the term "foreign personal holding company income" means the portion of the gross income which consists of:

(A) Dividends, etc.

Dividends, interest, royalties, rents, and annuities.