

by subsection (b) [amending this section and section 1248 of this title] shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of such Code applies occurring after October 9, 1975.

“(B) ELECTION.—

“(i) Subparagraph (A) shall apply with respect to transactions to which subsection (a) of section 1248 of such Code applies if the foreign corporation described in such subsection (or its successor in interest) so elects.

“(ii) Subparagraph (A) shall apply with respect to transactions to which subsection (f) of section 1248 of such Code applies if the domestic corporation described in section 1248(f)(1) of such Code (or its successor) so elects.

“(iii) Any election under clause (i) or (ii) shall be made not later than the date which is 1 year after the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986] and shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe.”

## **§ 960. Deemed paid credit for subpart F inclusions**

### **(a) In general**

For purposes of subpart A of this part, if there is included in the gross income of a domestic corporation any item of income under section 951(a)(1) with respect to any controlled foreign corporation with respect to which such domestic corporation is a United States shareholder, such domestic corporation shall be deemed to have paid so much of such foreign corporation's foreign income taxes as are properly attributable to such item of income.

### **(b) Special rules for distributions from previously taxed earnings and profits**

For purposes of subpart A of this part—

#### **(1) In general**

If any portion of a distribution from a controlled foreign corporation to a domestic corporation which is a United States shareholder with respect to such controlled foreign corporation is excluded from gross income under section 959(a), such domestic corporation shall be deemed to have paid so much of such foreign corporation's foreign income taxes as—

(A) are properly attributable to such portion, and

(B) have not been deemed to have to<sup>1</sup> been paid by such domestic corporation under this section for the taxable year or any prior taxable year.

#### **(2) Tiered controlled foreign corporations**

If section 959(b) applies to any portion of a distribution from a controlled foreign corporation to another controlled foreign corporation, such controlled foreign corporation shall be deemed to have paid so much of such other controlled foreign corporation's foreign income taxes as—

(A) are properly attributable to such portion, and

(B) have not been deemed to have been paid by a domestic corporation under this section for the taxable year or any prior taxable year.

## **(c) Special rules for foreign tax credit in year of receipt of previously taxed earnings and profits**

### **(1) Increase in section 904 limitation**

In the case of any taxpayer who—

(A) either (i) chose to have the benefits of subpart A of this part for a taxable year beginning after September 30, 1993, in which he was required under section 951(a) to include any amount in his gross income, or (ii) did not pay or accrue for such taxable year any income, war profits, or excess profits taxes to any foreign country or to any possession of the United States,

(B) chooses to have the benefits of subpart A of this part for any taxable year in which he receives 1 or more distributions or amounts which are excludable from gross income under section 959(a) and which are attributable to amounts included in his gross income for taxable years referred to in subparagraph (A), and

(C) for the taxable year in which such distributions or amounts are received, pays, or is deemed to have paid, or accrues income, war profits, or excess profits taxes to a foreign country or to any possession of the United States with respect to such distributions or amounts,

the limitation under section 904 for the taxable year in which such distributions or amounts are received shall be increased by the lesser of the amount of such taxes paid, or deemed paid, or accrued with respect to such distributions or amounts or the amount in the excess limitation account as of the beginning of such taxable year.

### **(2) Excess limitation account**

#### **(A) Establishment of account**

Each taxpayer meeting the requirements of paragraph (1)(A) shall establish an excess limitation account. The opening balance of such account shall be zero.

#### **(B) Increases in account**

For each taxable year beginning after September 30, 1993, the taxpayer shall increase the amount in the excess limitation account by the excess (if any) of—

(i) the amount by which the limitation under section 904(a) for such taxable year was increased by reason of the total amount of the inclusions in gross income under section 951(a) for such taxable year, over

(ii) the amount of any income, war profits, and excess profits taxes paid, or deemed paid, or accrued to any foreign country or possession of the United States which were allowable as a credit under section 901 for such taxable year and which would not have been allowable but for the inclusions in gross income described in clause (i).

Proper reductions in the amount added to the account under the preceding sentence for any taxable year shall be made for any increase in the credit allowable under section 901 for such taxable year by reason of a

<sup>1</sup> So in original.

carryback if such increase would not have been allowable but for the inclusions in gross income described in clause (i).

**(C) Decreases in account**

For each taxable year beginning after September 30, 1993, for which the limitation under section 904 was increased under paragraph (1), the taxpayer shall reduce the amount in the excess limitation account by the amount of such increase.

**(3) Distributions of income previously taxed in years beginning before October 1, 1993**

If the taxpayer receives a distribution or amount in a taxable year beginning after September 30, 1993, which is excluded from gross income under section 959(a) and is attributable to any amount included in gross income under section 951(a) for a taxable year beginning before October 1, 1993, the limitation under section 904 for the taxable year in which such amount or distribution is received shall be increased by the amount determined under this subsection as in effect on the day before the date of the enactment of the Revenue Reconciliation<sup>2</sup> Act of 1993.

**(4) Cases in which taxes not to be allowed as deduction**

In the case of any taxpayer who—

(A) chose to have the benefits of subpart A of this part for a taxable year in which he was required under section 951(a) to include in his gross income an amount in respect of a controlled foreign corporation, and

(B) does not choose to have the benefits of subpart A of this part for the taxable year in which he receives a distribution or amount which is excluded from gross income under section 959(a) and which is attributable to earnings and profits of the controlled foreign corporation which was included in his gross income for the taxable year referred to in subparagraph (A),

no deduction shall be allowed under section 164 for the taxable year in which such distribution or amount is received for any income, war profits, or excess profits taxes paid or accrued to any foreign country or to any possession of the United States on or with respect to such distribution or amount.

**(5) Insufficient taxable income**

If an increase in the limitation under this subsection exceeds the tax imposed by this chapter for such year, the amount of such excess shall be deemed an overpayment of tax for such year.

**(d) Deemed paid credit for taxes properly attributable to tested income**

**(1) In general**

For purposes of subpart A of this part, if any amount is includible in the gross income of a domestic corporation under section 951A, such domestic corporation shall be deemed to have paid foreign income taxes equal to 80 percent of the product of—

(A) such domestic corporation's inclusion percentage, multiplied by

(B) the aggregate tested foreign income taxes paid or accrued by controlled foreign corporations.

**(2) Inclusion percentage**

For purposes of paragraph (1), the term “inclusion percentage” means, with respect to any domestic corporation, the ratio (expressed as a percentage) of—

(A) such corporation's global intangible low-taxed income (as defined in section 951A(b)), divided by

(B) the aggregate amount described in section 951A(c)(1)(A) with respect to such corporation.

**(3) Tested foreign income taxes**

For purposes of paragraph (1), the term “tested foreign income taxes” means, with respect to any domestic corporation which is a United States shareholder of a controlled foreign corporation, the foreign income taxes paid or accrued by such foreign corporation which are properly attributable to the tested income of such foreign corporation taken into account by such domestic corporation under section 951A.

**(e) Foreign income taxes**

The term “foreign income taxes” means any income, war profits, or excess profits taxes paid or accrued to any foreign country or possession of the United States.

**(f) Regulations**

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this section.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1020; amended Pub. L. 94-455, title X, §§1031(b)(1), 1033(b)(2), 1037(a), Oct. 4, 1976, 90 Stat. 1622, 1628, 1633; Pub. L. 99-514, title XII, §1202(b), Oct. 22, 1986, 100 Stat. 2530; Pub. L. 103-66, title XIII, §13233(b)(1), Aug. 10, 1993, 107 Stat. 502; Pub. L. 105-34, title XI, §1113(b), Aug. 5, 1997, 111 Stat. 971; Pub. L. 111-226, title II, §214(a), Aug. 10, 2010, 124 Stat. 2399; Pub. L. 115-97, title I, §§14201(b)(1), 14301(b), Dec. 22, 2017, 131 Stat. 2212, 2221.)

**Editorial Notes**

**REFERENCES IN TEXT**

The date of the enactment of the Revenue Reconciliation Act of 1993, referred to in subsec. (c)(3), is the date of enactment of Pub. L. 103-66, which was approved Aug. 10, 1993.

**AMENDMENTS**

2017—Pub. L. 115-97, §14301(b)(1), substituted “Deemed paid credit for subpart F inclusions” for “Special rules for foreign tax credit” in section catchline.

Subsecs. (a) to (c). Pub. L. 115-97, §14301(b)(1), added subsecs. (a) and (b), redesignated former subsec. (b) as (c), and struck out former subsecs. (a) and (c) which related to taxes paid by a foreign corporation and limitation with respect to section 956 inclusions, respectively.

Subsec. (d). Pub. L. 115-97, §14201(b)(1), added subsec. (d).

Subsecs. (e), (f). Pub. L. 115-97, §14301(b)(2), added subsecs. (e) and (f).

2010—Subsec. (c). Pub. L. 111-226 added subsec. (c).

1997—Subsec. (a)(1). Pub. L. 105-34 amended heading and text of par. (1) generally. Prior to amendment, text

<sup>2</sup> So in original. Probably should be “Reconciliation”.

read as follows: “For purposes of subpart A of this part, if there is included, under section 951(a), in the gross income of a domestic corporation any amount attributable to earnings and profits—

“(A) of a foreign corporation (hereafter in this subsection referred to as the ‘first foreign corporation’) at least 10 percent of the voting stock of which is owned by such domestic corporation, or

“(B) of a second foreign corporation (hereinafter in this subsection referred to as the ‘second foreign corporation’) at least 10 percent of the voting stock of which is owned by the first foreign corporation, or

“(C) of a third foreign corporation (hereinafter in this subsection referred to as the ‘third foreign corporation’) at least 10 percent of the voting stock of which is owned by the second foreign corporation, then, except to the extent provided in regulations, such domestic corporation shall be deemed to have paid a portion of such foreign corporation’s post-1986 foreign income taxes determined under section 902 in the same manner as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B)). This paragraph shall not apply with respect to any amount included in the gross income of such domestic corporation attributable to earnings and profits of the second foreign corporation or of the third foreign corporation unless, in the case of the second foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(A) is satisfied, and in the case of the third foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(B) is satisfied.”

1993—Subsec. (b). Pub. L. 103-66 added pars. (1) to (3), redesignated former pars. (3) and (4) as (4) and (5), respectively, and struck out former par. (1) relating to increase in section 904 limitation and former par. (2) relating to the amount of increase.

1986—Subsec. (a)(1). Pub. L. 99-514 substituted “then, except to the extent provided in regulations, such domestic corporation shall be deemed to have paid a portion of such foreign corporation’s post-1986 foreign income taxes determined under section 902 in the same manner as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B))” for “then, under regulations prescribed by the Secretary, such domestic corporation shall be deemed to have paid the same proportion of the total income, war profits, and excess profits taxes paid (or deemed paid) by such foreign corporation to a foreign country or possession of the United States for the taxable year on or with respect to the earnings and profits of such foreign corporation which the amount of earnings and profits of such foreign corporation so included in gross income of the domestic corporation bears to the entire amount of the earnings and profits of such corporation for such taxable year”.

1976—Subsec. (a)(1). Pub. L. 94-455, §§1033(b)(2), 1037(a), substituted “bears to the entire amount of the earnings and profits of such foreign corporation for such taxable year” for “bears to—” after “gross income of the domestic corporation”, struck out subpars. (C) and (D) relating to corporations which are and are not less developed country corporations, inserted in subpar. (A) “(hereafter in this subsection referred to as the ‘first foreign corporation’)” after “foreign corporation”, substituted in subpar. (B) “of a second foreign corporation (hereinafter in this subsection referred to as the ‘second foreign corporation’) at least 10 percent of the voting stock of which is owned by the first foreign corporation, or” for “of a foreign corporation at least 50 percent of the voting stock of which is owned by a foreign corporation at least 10 percent of the voting stock of which in turn owned by such domestic corporation” after “(B)”, added subpar. (C), and inserted at end “This paragraph shall not apply with respect to any amount included in the gross income of such domestic corporation attributable to earnings and profits of the second foreign corporation or of the third foreign

corporation unless, in the case of the second foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(A) is satisfied, and in the case of the third foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(B) is satisfied.”

Subsec. (b). Pub. L. 94-455, §1031(b)(1), struck out “applicable” in par. (1) after “amount, the”, in par. (2) after “increase of the”, and in subpar. (A) of par. (2) after “by which the”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 14201(b)(1) 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 14201(d) of Pub. L. 115-97, set out as a note under section 904 of this title.

Amendment by section 14301(b) 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.

##### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-226, title II, §214(b), Aug. 10, 2010, 124 Stat. 2399, provided that: “The amendment made by this section [amending this section] shall apply to acquisitions of United States property (as defined in section 956(c) of the Internal Revenue Code of 1986) after December 31, 2010.”

##### EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XI, §1113(c), Aug. 5, 1997, 111 Stat. 971, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 902 of this title] shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of enactment of this Act [Aug. 5, 1997].

“(2) SPECIAL RULE.—In the case of any chain of foreign corporations described in clauses (i) and (ii) of [former] section 902(b)(2)(B) of the Internal Revenue Code of 1986 (as amended by this section), no liquidation, reorganization, or similar transaction in a taxable year beginning after the date of the enactment of this Act shall have the effect of permitting taxes to be taken into account under section 902 of the Internal Revenue Code of 1986 which could not have been taken into account under such section but for such transaction.”

##### EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-66, title XIII, §13233(b)(2), Aug. 10, 1993, 107 Stat. 504, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after September 30, 1993.”

##### EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XII, §1202(e), Oct. 22, 1986, 100 Stat. 2531, provided that: “The amendments made by this section [amending this section and sections 902 and 6038 of this title] shall apply to distributions by foreign corporations out of, and to inclusions under section 951(a) of the Internal Revenue Code of 1986 attributable to, earnings and profits for taxable years beginning after December 31, 1986.”

##### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1031(b)(1) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1975, see section 1031(c) of Pub. L. 94-455, set out as a note under section 904 of this title.

Pub. L. 94-455, title X, §1033(c), Oct. 4, 1976, 90 Stat. 1628, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [amending this section and sections 78, 535, 545, and 902 of this title] shall apply—

“(1) in respect of any distribution received by a domestic corporation after December 31, 1977, and

“(2) in respect of any distribution received by a domestic corporation before January 1, 1978, in a taxable year of such corporation beginning after December 31, 1975, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year (of such foreign corporation) beginning after December 31, 1975.

For purposes of paragraph (2), a distribution made by a foreign corporation out of its profits which are attributable to a distribution received from a foreign corporation to which [former] section 902(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies shall be treated as made out of the accumulated profits of a foreign corporation for a taxable year beginning before January 1, 1976, to the extent that such distribution was paid out of the accumulated profits of such foreign corporation for a taxable year beginning before January 1, 1976.”

Pub. L. 94-455, title X, §1037(b), Oct. 4, 1976, 90 Stat. 1634, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendment made by this section [amending this section] shall apply with respect to earnings and profits of a foreign corporation, included, under section 951(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the gross income of a domestic corporation in taxable years beginning after December 31, 1976.”

**INCREASE IN EARNINGS AND PROFITS OF FOREIGN CORPORATIONS UNDER SECTION 1023(e)(3)(C) OF PUB. L. 99-514**

Pub. L. 100-647, title I, §1012(b)(3), Nov. 10, 1988, 102 Stat. 3496, provided that: “For purposes of sections [former] 902 and 960 of the 1986 Code, the increase in earnings and profits of any foreign corporation 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] shall be taken into account ratably over the 10-year period beginning with the corporation's first taxable year beginning after December 31, 1986.”

## **§ 961. Adjustments to basis of stock in controlled foreign corporations and of other property**

### **(a) Increase in basis**

Under regulations prescribed by the Secretary, the basis of a United States shareholder's stock in a controlled foreign corporation, and the basis of property of a United States shareholder by reason of which he is considered under section 958(a)(2) as owning stock of a controlled foreign corporation, shall be increased by the amount required to be included in his gross income under section 951(a) with respect to such stock or with respect to such property, as the case may be, but only to the extent to which such amount was included in the gross income of such United States shareholder. In the case of a United States shareholder who has made an election under section 962 for the taxable year, the increase in basis provided by this subsection shall not exceed an amount equal to the amount of tax paid under this chapter with respect to the amounts required to be included in his gross income under section 951(a).

### **(b) Reduction in basis**

#### **(1) In general**

Under regulations prescribed by the Secretary, the adjusted basis of stock or other

property with respect to which a United States shareholder or a United States person receives an amount which is excluded from gross income under section 959(a) shall be reduced by the amount so excluded. In the case of a United States shareholder who has made an election under section 962 for any prior taxable year, the reduction in basis provided by this paragraph shall not exceed an amount equal to the amount received which is excluded from gross income under section 959(a) after the application of section 962(d).

### **(2) Amount in excess of basis**

To the extent that an amount excluded from gross income under section 959(a) exceeds the adjusted basis of the stock or other property with respect to which it is received, the amount shall be treated as gain from the sale or exchange of property.

### **(c) Basis adjustments in stock held by foreign corporations**

Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning stock in a controlled foreign corporation which is owned by another controlled foreign corporation, then adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to—

(1) the basis of such stock, and

(2) the basis of stock in any other controlled foreign corporation by reason of which the United States shareholder is considered under section 958(a)(2) as owning the stock described in paragraph (1),

but only for the purposes of determining the amount included under section 951 in the gross income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations). The preceding sentence shall not apply with respect to any stock to which a basis adjustment applies under subsection (a) or (b).

### **(d) Basis in specified 10-percent owned foreign corporation reduced by nontaxed portion of dividend for purposes of determining loss**

If a domestic corporation received a dividend from a specified 10-percent owned foreign corporation (as defined in section 245A) in any taxable year, solely for purposes of determining loss on any disposition of stock of such foreign corporation in such taxable year or any subsequent taxable year, the basis of such domestic corporation in such stock shall be reduced (but not below zero) by the amount of any deduction allowable to such domestic corporation under section 245A with respect to such stock except to the extent such basis was reduced under section 1059 by reason of a dividend for which such a deduction was allowable.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1022; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105-34, title XI, §1112(b)(1), Aug. 5, 1997, 111 Stat.