

§ 956. Investment of earnings in United States property

(a) General rule

In the case of any controlled foreign corporation, the amount determined under this section with respect to any United States shareholder for any taxable year is the lesser of—

(1) the excess (if any) of—

(A) such shareholder's pro rata share of the average of the amounts of United States property held (directly or indirectly) by the controlled foreign corporation as of the close of each quarter of such taxable year, over

(B) the amount of earnings and profits described in section 959(c)(1)(A) with respect to such shareholder, or

(2) such shareholder's pro rata share of the applicable earnings of such controlled foreign corporation.

The amount taken into account under paragraph (1) with respect to any property shall be its adjusted basis as determined for purposes of computing earnings and profits, reduced by any liability to which the property is subject.

(b) Special rules

(1) Applicable earnings

For purposes of this section, the term "applicable earnings" means, with respect to any controlled foreign corporation, the sum of—

(A) the amount (not including a deficit) referred to in section 316(a)(1) to the extent such amount was accumulated in prior taxable years, and

(B) the amount referred to in section 316(a)(2),

but reduced by distributions made during the taxable year and by earnings and profits described in section 959(c)(1).

(2) Special rule for U.S. property acquired before corporation is a controlled foreign corporation

In applying subsection (a) to any taxable year, there shall be disregarded any item of United States property which was acquired by the controlled foreign corporation before the first day on which such corporation was treated as a controlled foreign corporation. The aggregate amount of property disregarded under the preceding sentence shall not exceed the portion of the applicable earnings of such controlled foreign corporation which were accumulated during periods before such first day.

(3) Special rule where corporation ceases to be controlled foreign corporation

If any foreign corporation ceases to be a controlled foreign corporation during any taxable year—

(A) the determination of any United States shareholder's pro rata share shall be made on the basis of stock owned (within the meaning of section 958(a)) by such shareholder on the last day during the taxable year on which the foreign corporation is a controlled foreign corporation,

(B) the average referred to in subsection (a)(1)(A) for such taxable year shall be deter-

mined by only taking into account quarters ending on or before such last day, and

(C) in determining applicable earnings, the amount taken into account by reason of being described in paragraph (2) of section 316(a) shall be the portion of the amount so described which is allocable (on a pro rata basis) to the part of such year during which the corporation is a controlled foreign corporation.

(c) United States property defined

(1) In general

For purposes of subsection (a), the term "United States property" means any property acquired after December 31, 1962, which is—

(A) tangible property located in the United States;

(B) stock of a domestic corporation;

(C) an obligation of a United States person; or

(D) any right to the use in the United States of—

(i) a patent or copyright,

(ii) an invention, model, or design (whether or not patented),

(iii) a secret formula or process, or

(iv) any other similar right,

which is acquired or developed by the controlled foreign corporation for use in the United States.

(2) Exceptions

For purposes of subsection (a), the term "United States property" does not include—

(A) obligations of the United States, money, or deposits with—

(i) any bank (as defined by section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)), without regard to subparagraphs (C) and (G) of paragraph (2) of such section), or

(ii) any corporation not described in clause (i) with respect to which a bank holding company (as defined by section 2(a) of such Act) or financial holding company (as defined by section 2(p) of such Act) owns directly or indirectly more than 80 percent by vote or value of the stock of such corporation;

(B) property located in the United States which is purchased in the United States for export to, or use in, foreign countries;

(C) any obligation of a United States person arising in connection with the sale or processing of property if the amount of such obligation outstanding at no time during the taxable year exceeds the amount which would be ordinary and necessary to carry on the trade or business of both the other party to the sale or processing transaction and the United States person had the sale or processing transaction been made between unrelated persons;

(D) any aircraft, railroad rolling stock, vessel, motor vehicle, or container used in the transportation of persons or property in foreign commerce and used predominantly outside the United States;

(E) an amount of assets of an insurance company equivalent to the unearned pre-

miums or reserves ordinary and necessary for the proper conduct of its insurance business attributable to contracts which are not contracts described in section 953(a)(1);¹

(F) the stock or obligations of a domestic corporation which is neither a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, nor a domestic corporation, 25 percent or more of the total combined voting power of which, immediately after the acquisition of any stock in such domestic corporation by the controlled foreign corporation, is owned, or is considered as being owned, by such United States shareholders in the aggregate;

(G) any movable property (other than a vessel or aircraft) which is used for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or under such waters when used on the Continental Shelf of the United States;

(H) an amount of assets of the controlled foreign corporation equal to the earnings and profits accumulated after December 31, 1962, and excluded from subpart F income under section 952(b);

(I) deposits of cash or securities made or received on commercial terms in the ordinary course of a United States or foreign person's business as a dealer in securities or in commodities, but only to the extent such deposits are made or received as collateral or margin for (i) a securities loan, notional principal contract, options contract, forward contract, or futures contract, or (ii) any other financial transaction in which the Secretary determines that it is customary to post collateral or margin;

(J) an obligation of a United States person to the extent the principal amount of the obligation does not exceed the fair market value of readily marketable securities sold or purchased pursuant to a sale and repurchase agreement or otherwise posted or received as collateral for the obligation in the ordinary course of its business by a United States or foreign person which is a dealer in securities or commodities;

(K) securities acquired and held by a controlled foreign corporation in the ordinary course of its business as a dealer in securities if—

(i) the dealer accounts for the securities as securities held primarily for sale to customers in the ordinary course of business, and

(ii) the dealer disposes of the securities (or such securities mature while held by the dealer) within a period consistent with the holding of securities for sale to customers in the ordinary course of business; and

(L) an obligation of a United States person which—

(i) is not a domestic corporation, and
(ii) is not—

(I) a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, or

(II) a partnership, estate, or trust in which the controlled foreign corporation, or any related person (as defined in section 954(d)(3)), is a partner, beneficiary, or trustee immediately after the acquisition of any obligation of such partnership, estate, or trust by the controlled foreign corporation.

For purposes of subparagraphs (I), (J), and (K), the term “dealer in securities” has the meaning given such term by section 475(c)(1), and the term “dealer in commodities” has the meaning given such term by section 475(e), except that such term shall include a futures commission merchant.

(3) Certain trade or service receivables acquired from related United States persons

(A) In general

Notwithstanding paragraph (2) (other than subparagraph (H) thereof), the term “United States property” includes any trade or service receivable if—

(i) such trade or service receivable is acquired (directly or indirectly) from a related person who is a United States person, and

(ii) the obligor under such receivable is a United States person.

(B) Definitions

For purposes of this paragraph, the term “trade or service receivable” and “related person” have the respective meanings given to such terms by section 864(d).

(d) Pledges and guarantees

For purposes of subsection (a), a controlled foreign corporation shall, under regulations prescribed by the Secretary, be considered as holding an obligation of a United States person if such controlled foreign corporation is a pledgor or guarantor of such obligations.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to prevent the avoidance of the provisions² of this section through reorganizations or otherwise.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1015; amended Pub. L. 94-455, title X, §1021(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1618, 1834; Pub. L. 98-369, div. A, title I, §123(b), title VIII, §801(d)(8), July 18, 1984, 98 Stat. 646, 996; Pub. L. 99-514, title XVIII, §1810(c)(1), Oct. 22, 1986, 100 Stat. 2824; Pub. L. 103-66, title XIII, §13232(a), (b), Aug. 10, 1993, 107 Stat. 501; Pub. L. 104-188, title I, §1501(b)(2), (3), Aug. 20, 1996, 110 Stat. 1825; Pub. L. 105-34, title XI, §1173(a), title XVI, §1601(e), Aug. 5, 1997, 111 Stat. 988, 1090; Pub. L. 108-357, title IV, §407(a), (b), title VIII, §837(a), Oct. 22, 2004, 118 Stat. 1498, 1499, 1596; Pub. L. 110-172, §11(g)(15)(A), Dec. 29, 2007, 121 Stat. 2490.)

REFERENCES IN TEXT

Section 953(a)(1), referred to in subsec. (c)(2)(E), was subsequently amended, and section 953(a)(1) no longer

¹ See References in Text note below.

² So in original. Probably should be “provisions”.

describes contracts. However, contracts are described elsewhere in that section.

AMENDMENTS

2007—Subsec. (c)(2). Pub. L. 110-172, §11(g)(15)(A)(ii), substituted “subparagraphs (I), (J), and (K)” for “subparagraphs (J), (K), and (L)” in concluding provisions.

Subsec. (c)(2)(I) to (M). Pub. L. 110-172, §11(g)(15)(A)(i), redesignated subpars. (J) to (M) as (I) to (L), respectively, and struck out former subpar. (I) which read as follows: “to the extent provided in regulations prescribed by the Secretary, property which is otherwise United States property which is held by a FSC and which is related to the export activities of such FSC;”.

2004—Subsec. (c)(2). Pub. L. 108-357, §407(b), substituted “, (K), and (L)” for “and (K)” in concluding provisions.

Subsec. (c)(2)(A). Pub. L. 108-357, §837(a), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “obligations of the United States, money, or deposits with persons carrying on the banking business;”.

Subsec. (c)(2)(L), (M). Pub. L. 108-357, §407(a), added subpars. (L) and (M).

1997—Subsec. (b)(1)(A). Pub. L. 105-34, §1601(e), inserted “to the extent such amount was accumulated in prior taxable years” after “section 316(a)(1)”.

Subsec. (c)(2). Pub. L. 105-34, §1173(a), added subpars. (J) and (K) and concluding provisions.

1996—Subsec. (b)(1). Pub. L. 104-188, §1501(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “For purposes of this section, the term ‘applicable earnings’ has the meaning given to such term by section 956A(b), except that the provisions of such section excluding earnings and profits accumulated in taxable years beginning before October 1, 1993, shall be disregarded.”

Subsec. (b)(3). Pub. L. 104-188, §1501(b)(3), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Rules similar to the rules of section 956A(e) shall apply for purposes of this section.”

1993—Subsec. (a). Pub. L. 103-66, §13232(a)(2), added subsec. (a) and struck out former subsec. (a) which consisted of introductory provisions and pars. (1) to (3) setting out general rules for calculating amount of earnings of a controlled foreign corporation invested in United States and pro rata share of the increase for any taxable year in earnings of such a corporation invested in United States property.

Subsecs. (b) to (d). Pub. L. 103-66, §13232(a), added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

Subsec. (e). Pub. L. 103-66, §13232(b), added subsec. (e).

1986—Subsec. (b)(3)(A). Pub. L. 99-514 inserted “(other than subparagraph (H) thereof)”.

1984—Subsec. (b)(2)(I). Pub. L. 98-369, §801(d)(8), added subpar. (I).

Subsec. (b)(3). Pub. L. 98-369, §123(b), added par. (3).

1976—Subsec. (b)(2)(F) to (H). Pub. L. 94-455, §1021(a), added subpars. (F) and (G) and redesignated former subpar. (F) as (H).

Subsec. (c). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title IV, §407(c), Oct. 22, 2004, 118 Stat. 1499, provided that: “The amendments made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

Pub. L. 108-357, title VIII, §837(b), Oct. 22, 2004, 118 Stat. 1596, provided that: “The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 22, 2004].”

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1173(b) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this sec-

tion] shall apply to taxable years of foreign corporations beginning after December 31, 1997, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

Amendment by section 1601(e) of Pub. L. 105-34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which it relates, see section 1601(j) of Pub. L. 105-34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104-188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to taxable years of controlled foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end, see section 13232(d) of Pub. L. 103-66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by 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

Amendment by section 123(b) of Pub. L. 98-369 applicable to accounts receivable and evidences of indebtedness transferred after Mar. 1, 1984, in taxable years ending after such date, with an exception, see section 123(c) of Pub. L. 98-369, set out as a note under section 864 of this title.

Amendment by section 801(d)(8) 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 1976 AMENDMENT

Section 1021(c) of Pub. L. 94-455, 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 section 958 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end. In determining for purposes of any taxable year referred to in the preceding sentence the amount referred to in section 956(a)(2)(A) of the Internal Revenue Code of 1986 for the last taxable year of a corporation beginning before January 1, 1976, the amendments made by this section shall be deemed also to apply to such last taxable year.”

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.

[§ 956A. Repealed. Pub. L. 104-188, title I, § 1501(a)(2), Aug. 20, 1996, 110 Stat. 1825]

Section, added Pub. L. 103-66, title XIII, §13231(b), Aug. 10, 1993, 107 Stat. 496; amended Pub. L. 104-188,