

**§ 902. Deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation**

**(a) Taxes paid by foreign corporation treated as paid by domestic corporation**

For purposes of this subpart, a domestic corporation which owns 10 percent or more of the voting stock of a foreign corporation from which it receives dividends in any taxable year shall be deemed to have paid the same proportion of such foreign corporation's post-1986 foreign income taxes as—

- (1) the amount of such dividends (determined without regard to section 78), bears to
- (2) such foreign corporation's post-1986 undistributed earnings.

**(b) Deemed taxes increased in case of certain lower tier corporations**

**(1) In general**

If—

- (A) any foreign corporation is a member of a qualified group, and
- (B) such foreign corporation owns 10 percent or more of the voting stock of another member of such group from which it receives dividends in any taxable year,

such foreign corporation shall be deemed to have paid the same proportion of such other member's post-1986 foreign income taxes as would be determined under subsection (a) if such foreign corporation were a domestic corporation.

**(2) Qualified group**

For purposes of paragraph (1), the term "qualified group" means—

- (A) the foreign corporation described in subsection (a), and
- (B) any other foreign corporation if—
  - (i) the domestic corporation owns at least 5 percent of the voting stock of such other foreign corporation indirectly through a chain of foreign corporations connected through stock ownership of at least 10 percent of their voting stock,
  - (ii) the foreign corporation described in subsection (a) is the first tier corporation in such chain, and
  - (iii) such other corporation is not below the sixth tier in such chain.

The term "qualified group" shall not include any foreign corporation below the third tier in the chain referred to in clause (i) unless such foreign corporation is a controlled foreign corporation (as defined in section 957) and the domestic corporation is a United States shareholder (as defined in section 951(b)) in such foreign corporation. Paragraph (1) shall apply to those taxes paid by a member of the qualified group below the third tier only with respect to periods during which it was a controlled foreign corporation.

**(c) Definitions and special rules**

For purposes of this section—

**(1) Post-1986 undistributed earnings**

The term "post-1986 undistributed earnings" means the amount of the earnings and profits

of the foreign corporation (computed in accordance with sections 964(a) and 986) accumulated in taxable years beginning after December 31, 1986—

(A) as of the close of the taxable year of the foreign corporation in which the dividend is distributed, and

(B) without diminution by reason of dividends distributed during such taxable year.

**(2) Post-1986 foreign income taxes**

The term "post-1986 foreign income taxes" means the sum of—

(A) the foreign income taxes with respect to the taxable year of the foreign corporation in which the dividend is distributed, and

(B) the foreign income taxes with respect to prior taxable years beginning after December 31, 1986, to the extent such foreign taxes were not attributable to dividends distributed by the foreign corporation in prior taxable years.

**(3) Special rule where foreign corporation first qualifies after December 31, 1986**

**(A) In general**

If the 1st day on which the requirements of subparagraph (B) are met with respect to any foreign corporation is in a taxable year of such corporation beginning after December 31, 1986, the post-1986 undistributed earnings and the post-1986 foreign income taxes of such foreign corporation shall be determined by taking into account only periods beginning on and after the 1st day of the 1st taxable year in which such requirements are met.

**(B) Ownership requirements**

The requirements of this subparagraph are met with respect to any foreign corporation if—

- (i) 10 percent or more of the voting stock of such foreign corporation is owned by a domestic corporation, or
- (ii) the requirements of subsection (b)(2) are met with respect to such foreign corporation.

**(4) Foreign income taxes**

**(A) In general**

The term "foreign income taxes" means any income, war profits, or excess profits taxes paid by the foreign corporation to any foreign country or possession of the United States.

**(B) Treatment of deemed taxes**

Except for purposes of determining the amount of the post-1986 foreign income taxes of a sixth tier foreign corporation referred to in subsection (b)(2), the term "foreign income taxes" includes any such taxes deemed to be paid by the foreign corporation under this section.

**(5) Accounting periods**

In the case of a foreign corporation the income, war profits, and excess profits taxes of which are determined on the basis of an accounting period of less than 1 year, the word "year" as used in this subsection shall be construed to mean such accounting period.

**(6) Treatment of distributions from earnings before 1987****(A) In general**

In the case of any dividend paid by a foreign corporation out of accumulated profits (as defined in this section as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) for taxable years beginning before the 1st taxable year taken into account in determining the post-1986 undistributed earnings of such corporation—

(i) this section (as amended by the Tax Reform Act of 1986) shall not apply, but

(ii) this section (as in effect on the day before the date of the enactment of such Act) shall apply.

**(B) Dividends paid first out of post-1986 earnings**

Any dividend in a taxable year beginning after December 31, 1986, shall be treated as made out of post-1986 undistributed earnings to the extent thereof.

**(7) Constructive ownership through partnerships**

Stock owned, directly or indirectly, by or for a partnership shall be considered as being owned proportionately by its partners. Stock considered to be owned by a person by reason of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person. The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including rules to account for special partnership allocations of dividends, credits, and other incidents of ownership of stock in determining proportionate ownership.

**(8) Regulations**

The Secretary shall provide such regulations as may be necessary or appropriate to carry out the provisions of this section and section 960, including provisions which provide for the separate application of this section and section 960 to reflect the separate application of section 904 to separate types of income and loss.

**(d) Cross references**

**(1) For inclusion in gross income of an amount equal to taxes deemed paid under subsection (a), see section 78.**

**(2) For application of subsections (a) and (b) with respect to taxes deemed paid in a prior taxable year by a United States shareholder with respect to a controlled foreign corporation, see section 960.**

**(3) For reduction of credit with respect to dividends paid out of post-1986 undistributed earnings for years for which certain information is not furnished, see section 6038.**

(Aug. 16, 1954, ch. 736, 68A Stat. 286; Pub. L. 86-780, §6(b)(2), Sept. 14, 1960, 74 Stat. 1016; Pub. L. 87-834, §9(a), Oct. 16, 1962, 76 Stat. 999; Pub. L. 91-684, §§1, 2, Jan. 12, 1971, 84 Stat. 2068, 2069; Pub. L. 94-12, title VI, §602(c)(6), Mar. 29, 1975, 89 Stat. 59; Pub. L. 94-455, title X, §1033(a), Oct. 4, 1976, 90 Stat. 1626; Pub. L. 99-514, title XII, §1202(a), Oct. 22, 1986, 100 Stat. 2528; Pub. L. 100-647, title I, §1012(b)(1), (2), Nov. 10, 1988, 102 Stat. 3496; Pub. L. 105-34, title XI, §§1113(a),

1163(a), Aug. 5, 1997, 111 Stat. 970, 987; Pub. L. 108-357, title IV, §405(a), Oct. 22, 2004, 118 Stat. 1498.)

## REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (c)(6)(A), is the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

The Tax Reform Act of 1986, referred to in subsec. (c)(6)(A)(i), is Pub. L. 99-514, Oct. 22, 1986, 100 Stat. 2085. For complete classification of this Act to the Code, see Tables.

## AMENDMENTS

2004—Subsec. (c)(7), (8). Pub. L. 108-357 added par. (7) and redesignated former par. (7) as (8).

1997—Subsec. (b). Pub. L. 105-34, §1113(a)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) consisted of pars. (1) to (3) relating to deemed taxes increased in case of certain 2nd and 3rd tier foreign corporations.

Subsec. (c)(2)(B). Pub. L. 105-34, §1163(a), substituted “attributable to” for “deemed paid with respect to”.

Subsec. (c)(3). Pub. L. 105-34, §1113(a)(2)(C), substituted “where foreign corporation first qualifies” for “where domestic corporation acquires 10 percent of foreign corporation” in heading.

Pub. L. 105-34, §1113(a)(2)(D), struck out “ownership” after “on which the” and “in which such” in subpar. (A) and before “requirements of this subparagraph” in introductory provisions of subpar. (B).

Subsec. (c)(3)(B). Pub. L. 105-34, §1113(a)(2)(A), inserted “or” at end of cl. (i), added cl. (ii), and struck out former cls. (ii) and (iii) which read as follows:

“(ii) the requirements of subsection (b)(3)(A) are met with respect to such foreign corporation and 10 percent or more of the voting stock of such foreign corporation is owned by another foreign corporation described in clause (i), or

“(iii) the requirements of subsection (b)(3)(B) are met with respect to such foreign corporation and 10 percent or more of the voting stock of such foreign corporation is owned by another foreign corporation described in clause (ii).”

Subsec. (c)(4)(B). Pub. L. 105-34, §1113(a)(2)(B), substituted “sixth tier foreign corporation” for “3rd foreign corporation”.

1988—Subsec. (c)(1). Pub. L. 100-647, §1012(b)(2), substituted “sections 964(a) and 986” for “sections 964 and 986”.

Subsec. (c)(7). Pub. L. 100-647, §1012(b)(1), substituted “section 960” for “secton 960” and “this section and section 960” for second reference to “this section”.

1986—Pub. L. 99-514 amended section generally, substituting “Deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation” for “Credit for corporate stockholder in foreign corporation” as section catchline and substituting present provisions generally relating to post-1986 earnings and taxes for former provisions which had provided in subsec. (a) for a general rule with respect to treatment of taxes paid by foreign corporations, in subsec. (b) for treatment of taxes by a foreign subsidiary of first and second foreign corporations, in subsec. (c) for rules defining accumulated profits and determining accounting periods, and in subsec. (d) for cross references.

1976—Pub. L. 94-455, §1033(a), struck out provisions by which dividends from less developed country corporations are not grossed-up by the amount of foreign taxes paid on the underlying income and the deemed-paid foreign tax credits attributable to those dividends are reduced proportionately, struck out subsec. (d) which defined less developed country corporations, and redesignated subsec. (e) as (d).

1975—Subsec. (d). Pub. L. 94-12 substituted “paragraph (3) or (4)”, “paragraph (3)”, “paragraph (3)(A)”, and “paragraph (3)(B)” for “section 955(c)(1) or (2)”, “section 955(c)(1)”, “section 955(c)(1)(A)”, and “section

955(c)(1)(B)”, respectively, in existing provisions and added pars. (3), (4), and (5) and provisions following par. (5).

1971—Subsec. (b). Pub. L. 91-684, §1, substituted “Foreign subsidiary of first and second foreign corporation” for “Foreign subsidiary of foreign corporation” in heading, designated existing provisions as par. (1) and inserted terminology denominating corporations involved as first foreign corporation and second foreign corporation, and reduced the ownership percentage requirement in voting stock from 50 percent to 10 percent between the first and second foreign corporations, and added pars. (2) and (3).

Subsec. (c)(1)(A). Pub. L. 91-684, §2(1), substituted “(b)(1)(A), and (b)(2)(A)” for “and (b)(1)”.

Subsec. (c)(1)(B). Pub. L. 91-684, §2(2), substituted “(b)(1)(B), and (b)(2)(B)” for “and (b)(2)”.

1962—Subsec. (a). Pub. L. 87-834 limited provisions which required a domestic corporation owning at least 10 per cent of the voting stock of a foreign corporation from which it receives dividends in any taxable year to be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States which the amount of such dividends bears to the amount of accumulated profits to those cases where a foreign corporation paid such dividends out of accumulated profits of a year for which such foreign corporation is a less developed country corporation, and inserted provisions requiring, in the case of a domestic corporation which owns at least 10 percent of the voting stock of a foreign corporation from which it receives dividends in a taxable year, to the extent such dividends are paid by such foreign corporation out of accumulated profits of a year for which such foreign corporation is not a less developed country corporation, to be deemed to have paid the same proportion of any income, war profits, or excess profits taxes paid or deemed to be paid by such foreign corporation to any foreign country or to any possession of the United States on or with respect to such accumulated profits, which the amount of such dividends (determined without regard to section 78) bears to the amount of such accumulated profits in excess of such income, war profits, and excess profits taxes (other than those deemed paid).

Subsec. (b). Pub. L. 87-834 substituted “from which such dividends were paid which—

“(1) for purposes of applying subsection (a)(1), the amount of such dividends bears to the amount of the accumulated profits (as defined in subsection (c)(1)(A)) of such other foreign corporation from which such dividends were paid in excess of such income, war profits, and excess profits taxes, or

“(2) for purposes of applying subsection (a)(2), the amount of such dividends bears to the amount of the accumulated profits (as defined in subsection (c)(1)(B)) of such other foreign corporation from which such dividends were paid”

for “from which such dividends were paid, which the amount of such dividends bears to the amount of such accumulated profits”.

Subsec. (c). Pub. L. 87-834 defined “accumulated profits” for purposes of subsecs. (a)(1) and (b)(1) as meaning the amount of its gains, profits, or income computed without reduction by the amount of the income, war profits, and excess profits taxes imposed on or with respect to such profits or income by and foreign country or any possession of the United States, and limited provisions defining “accumulated profits” as the amount of its gains, profits, or income in excess of the income, war profits, and excess profits taxes imposed on or with respect to such profits or income to subsecs. (a)(2) and (b)(2).

Subsec. (d). Pub. L. 87-834 substituted provisions defining “less developed country corporation” for provisions which established special rules for certain wholly-owned foreign corporations.

Subsec. (e). Pub. L. 87-834 designated existing provisions as par. (3) and added pars. (1) and (2).

1960—Subsec. (e). Pub. L. 86-780 added subsec. (e).

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxes of foreign corporations for taxable years of such corporations beginning after Oct. 22, 2004, see section 405(c) of Pub. L. 108-357, set out as a note under section 901 of this title.

#### 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 960 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 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.”

Pub. L. 105-34, title XI, §1163(c), Aug. 5, 1997, 111 Stat. 987, provided that: “The amendments made by this section [amending this section and section 904 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1997].”

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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.

#### 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 960 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

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 960 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 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.”

#### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-12 applicable to taxable years of foreign corporations beginning after Dec. 31,

1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of this title) with- in which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94-12, set out as an Effective Date note under section 955 of this title.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Pub. L. 91-684, § 3, Jan. 12, 1971, 84 Stat. 2069, provided that: "The amendments made by this Act [amending this section] shall apply with respect to all taxable years of domestic corporations, ending after the date of enactment of this Act [Jan. 12, 1971], but only in respect of dividends paid by one corporation to another corporation after the date of the enactment of this Act."

#### EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87-834, § 9(e), Oct. 16, 1962, 76 Stat. 1001, provided that: "The amendments made by this section [enacting section 78 of this title and amending this section and sections 535, 545, 861, and 901 of this title] shall apply—

"(1) in respect of any distribution received by a domestic corporation after December 31, 1964, and

"(2) in respect of any distribution received by a domestic corporation before January 1, 1965, in a taxable year of such corporation beginning after December 31, 1962, 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, 1962. 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 subsidiary to which section 902(b) applies shall be treated as made out of the accumulated profits of a foreign corporation for a taxable year beginning before January 1, 1963, to the extent that such distribution was paid out of the accumulated profits of such foreign subsidiary for a taxable year beginning before January 1, 1963."

#### EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-780 applicable to taxable years beginning after Dec. 31, 1960, see section 6(c) of Pub. L. 86-780, set out as an Effective Date note under section 6038 of this title.

#### 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 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."

### § 903. Credit for taxes in lieu of income, etc., taxes

For purposes of this part and of sections 164(a) and 275(a), the term "income, war profits, and excess profits taxes" shall include a tax paid in lieu of a tax on income, war profits, or excess profits otherwise generally imposed by any foreign country or by any possession of the United States.

(Aug. 16, 1954, ch. 736, 68A Stat. 287; Pub. L. 88-272, title II, § 207(b)(8), Feb. 26, 1964, 78 Stat. 42; Pub. L. 100-647, title I, § 1012(v)(9), Nov. 10, 1988, 102 Stat. 3530; Pub. L. 106-519, § 4(4), Nov. 15, 2000, 114 Stat. 2433; Pub. L. 108-357, title I, § 101(b)(7), Oct. 22, 2004, 118 Stat. 1423.)

#### AMENDMENTS

2004—Pub. L. 108-357 substituted "164(a)" for "114, 164(a)."

2000—Pub. L. 106-519 substituted "114, 164(a)," for "164(a)."

1988—Pub. L. 100-647 substituted "this part" for "this subpart".

1964—Pub. L. 88-272 substituted "sections 164(a) and 275(a)" for "section 164(b)".

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108-357, set out as a note under section 56 of this title.

#### EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-519 applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106-519, set out as a note under section 56 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by 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.

#### EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 207(c) of Pub. L. 88-272, set out as a note under section 164 of this title.

### § 904. Limitation on credit

#### (a) Limitation

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

#### (b) Taxable income for purpose of computing limitation

##### (1) Personal exemptions

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

##### (2) Capital gains

For purposes of this section—

##### (A) In general

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

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

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

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