

Stat. 2095, provided that: “The amendment made by this section [amending this section] 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.”

Pub. L. 94-455, title X, §1024(b), Oct. 4, 1976, 90 Stat. 1620, 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 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.”

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) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94-12, set out as an Effective Date note under section 955 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-172, title IX, §909(b), Dec. 30, 1969, 83 Stat. 718, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after October 9, 1969.”

LINE ITEM VETO

Pub. L. 105-34, title XI, §1175, Aug. 5, 1997, 111 Stat. 990, amending this section and enacting provisions set out as a note above, was subject to line item veto by the President, Cancellation No. 97-1, signed Aug. 11, 1997, 62 F.R. 43266, Aug. 12, 1997. For decision holding line item veto unconstitutional, see *Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998).

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 1201(c) of Pub. L. 99-514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100-647, set out as a note under section 861 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.

SPECIAL RULE FOR APPLICATION OF SECTION 954 TO CERTAIN DIVIDENDS

Pub. L. 99-514, title XII, §1227, Oct. 22, 1986, 100 Stat. 2560, provided that:

“(a) IN GENERAL.—For purposes of section 954(c)(3)(A) of the Internal Revenue Code of 1986, any dividends received by a qualified controlled foreign corporation (within the meaning of section 951 of such Code) during any of its 1st 5 taxable years beginning after December 31, 1986, with respect to its 32.7 percent interest in a

Brazilian corporation shall be treated as if such Brazilian corporation were a related person to the qualified controlled foreign corporation to the extent the Brazilian corporation's income is attributable to its interest in the trade or business of mining in Brazil.

“(b) QUALIFIED CONTROLLED FOREIGN CORPORATION.—For purposes of this section, a qualified controlled foreign corporation is a corporation the greater than 99 percent shareholder of which is a company originally incorporated in Montana on July 9, 1951 (the name of which was changed on August 10, 1966).

“(c) EFFECTIVE DATE.—The amendment made by this section shall apply to dividends received after December 31, 1986.”

§ 955. Withdrawal of previously excluded subpart F income from qualified investment

(a) General rules

(1) Amount withdrawn

For purposes of this subpart, the amount of previously excluded subpart F income of any controlled foreign corporation withdrawn from investment in foreign base company shipping operations for any taxable year is an amount equal to the decrease in the amount of qualified investments in foreign base company shipping operations of the controlled foreign corporation for such year, but only to the extent that the amount of such decrease does not exceed an amount equal to—

(A) the sum of the amounts excluded under section 954(b)(2) from the foreign base company income of such corporation for all prior taxable years beginning before 1987, reduced by

(B) the sum of the amounts of previously excluded subpart F income withdrawn from investment in foreign base company shipping operations of such corporation determined under this subsection for all prior taxable years.

(2) Decrease in qualified investments

For purposes of paragraph (1), the amount of the decrease in qualified investments in foreign base company shipping operations of any controlled foreign corporation for any taxable year is the amount by which—

(A) the amount of qualified investments in foreign base company shipping operations of the controlled foreign corporation as of the close of the last taxable year beginning before 1987 (to the extent such amount exceeds the sum of the decreases in qualified investments determined under this paragraph for prior taxable years beginning after 1986), exceeds

(B) the amount of qualified investments in foreign base company shipping operations of the controlled foreign corporation at the close of the taxable year,

to the extent that the amount of such decrease does not exceed the sum of the earnings and profits for the taxable year and the earnings and profits accumulated for prior taxable years beginning after December 31, 1975, and the amount of previously excluded subpart F income invested in less developed country corporations described in section 955(c)(2) (as in effect before the enactment of the Tax Reduction Act of 1975) to the extent attributable to

earnings and profits accumulated for taxable years beginning after December 31, 1962. For purposes of this paragraph, if qualified investments in foreign base company shipping operations are disposed of by the controlled foreign corporation during the taxable year, the amount of the decrease in qualified investments in foreign base company shipping operations of such controlled foreign corporations for such year shall be reduced by an amount equal to the amount (if any) by which the losses on such dispositions during such year exceed the gains on such dispositions during such year.

(3) Pro rata share of amount withdrawn

In the case of any United States shareholder, the pro rata share of the amount of previously excluded subpart F income of any controlled foreign corporation withdrawn from investment in foreign base company shipping operations for any taxable year is his pro rata share of the amount determined under paragraph (1).

(b) Qualified investments in foreign base company shipping operations

(1) In general

For purposes of this subpart, the term “qualified investments in foreign base company shipping operations” means investments in—

(A) any aircraft or vessel used in foreign commerce, and

(B) other assets which are used in connection with the performance of services directly related to the use of any such aircraft or vessel.

Such term includes, but is not limited to, investments by a controlled foreign corporation in stock or obligations of another controlled foreign corporation which is a related person (within the meaning of section 954(d)(3)) and which holds assets described in the preceding sentence, but only to the extent that such assets are so used.

(2) Qualified investments by related persons

For purposes of determining the amount of qualified investments in foreign based company shipping operations, an investment (or a decrease in investment) in such operations by one or more controlled foreign corporations may, under regulations prescribed by the Secretary, be treated as an investment (or a decrease in investment) by another corporation which is a controlled foreign corporation and is a related person (as defined in section 954(d)(3) with respect to the corporation actually making or withdrawing the investment.

(3) Special rule

For purposes of this subpart, a United States shareholder of a controlled foreign corporation may, under regulations prescribed by the Secretary, elect to make the determinations under subsection (a)(2) of this section and under subsection (g) of section 954 as of the close of the years following the years referred to in such subsections, or as of the close of such longer period of time as such regulations may permit, in lieu of on the last day of such

years. Any election under this paragraph made with respect to any taxable year shall apply to such year and to all succeeding taxable years unless the Secretary consents to the revocation of such election.

(4) Amount attributable to property

The amount taken into account under this subpart with respect to any property described in paragraph (1) shall be its adjusted basis, reduced by any liability to which such property is subject.

(5) Income excluded under prior law

Amounts invested in less developed country corporations described in section 955(c)(2) (as in effect before the enactment of the Tax Reduction Act of 1975) shall be treated as qualified investments in foreign base company shipping operations and shall not be treated as investments in less developed countries for purposes of section 951(a)(1)(A)(ii).

(Added Pub. L. 94-12, title VI, § 602(d)(3)(A), Mar. 29, 1975, 89 Stat. 62; amended Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 99-514, title XII, § 1221(c)(3)(B), (C), Oct. 22, 1986, 100 Stat. 2553; Pub. L. 100-647, title I, § 1012(i)(11), Nov. 10, 1988, 102 Stat. 3509.)

REFERENCES IN TEXT

Section 955(c)(2) (as in effect before the enactment of the Tax Reduction Act of 1975), referred to in subsecs. (a)(2) and (b)(5), refers to section 955(c)(2) as added by Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1013, and as in effect from 1962 until the repeal of that section and the enactment of this section by Pub. L. 94-12.

The Tax Reduction Act of 1975, referred to in subsecs. (a)(2) and (b)(5), is Pub. L. 94-12, Mar. 29, 1975, 89 Stat. 26, as amended, which was enacted Mar. 29, 1975. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 1 of this title and Tables.

PRIOR PROVISIONS

A prior section 955, added Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1013, related to investments in less developed countries and dealing with less developed country corporations, prior to repeal by Pub. L. 94-12, title VI, § 602(c)(5), Mar. 29, 1975, 89 Stat. 59.

AMENDMENTS

1988—Subsec. (a)(2)(A). Pub. L. 100-647 inserted “(to the extent such amount exceeds the sum of the decreases in qualified investments determined under this paragraph for prior taxable years beginning after 1986)” after “beginning before 1987”.

1986—Subsec. (a)(1)(A). Pub. L. 99-514, § 1221(c)(3)(B), inserted “beginning before 1987” after “all prior taxable years”.

Subsec. (a)(2)(A). Pub. L. 99-514, § 1221(c)(3)(C), substituted “as of the close of the last taxable year beginning before 1987” for “at the close of the preceding taxable year”.

1976—Subsec. (b)(2), (3). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

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

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

Pub. L. 94-12, title VI, §602(f), Mar. 29, 1975, 89 Stat. 64, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendments made by this section [enacting this section, amending sections 851, 902, 951, and 954 of this title, and repealing section 963 and former section 955 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 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."

§ 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 determined 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