

(2) for purposes of applying the provisions of section 960 (relating to foreign tax credit) such amounts shall be treated as if they were received by a domestic corporation.

(b) Election

An election to have the provisions of this section apply for any taxable year shall be made by a United States shareholder at such time and in such manner as the Secretary shall prescribe by regulations. An election made for any taxable year may not be revoked except with the consent of the Secretary.

(c) Pro ration of each section 11 bracket amount

For purposes of applying subsection (a)(1), the amount in each taxable income bracket in the tax table in section 11(b) shall not exceed an amount which bears the same ratio to such bracket amount as the amount included in the gross income of the United States shareholder under section 951(a) for the taxable year bears to such shareholder's pro rata share of the earnings and profits for the taxable year of all controlled foreign corporations with respect to which such shareholder includes any amount in gross income under section 951(a).

(d) Special rule for actual distributions

The earnings and profits of a foreign corporation attributable to amounts which were included in the gross income of a United States shareholder under section 951(a) and with respect to which an election under this section applied shall, when such earnings and profits are distributed, notwithstanding the provisions of section 959(a)(1), be included in gross income to the extent that such earnings and profits so distributed exceed the amount of tax paid under this chapter on the amounts to which such election applied.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1023; amended Pub. L. 94-12, title III, §303(c)(3), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94-164, §4(d)(1), Dec. 23, 1975, 89 Stat. 975; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title III, §301(b)(16), Nov. 6, 1978, 92 Stat. 2822; Pub. L. 100-647, title I, §1007(g)(11), Nov. 10, 1988, 102 Stat. 3435.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100-647 substituted “sections 1 and 55” and “sections 11 and 55” for “section 1” and “section 11”, respectively.

1978—Subsec. (c). Pub. L. 95-600 substituted provisions relating to the pro ration of each section 11 bracket amount for provisions relating to the surtax exemption.

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

1975—Subsec. (c). Pub. L. 94-164 substituted “same ratio to the surtax exemption” for “same ratio to \$25,000” in subsec. (c) as such subsec. (c) is in effect for taxable years ending after Dec. 31, 1975.

Pub. L. 94-12 substituted “\$50,000” for “\$25,000”.

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 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of

Pub. L. 95-600, set out as a note under section 11 of this title.

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENTS

Amendment by Pub. L. 94-164 applicable to taxable years beginning after Dec. 31, 1975, see section 4(e) of Pub. L. 94-164, set out as a note under section 11 of this title.

Amendment by Pub. L. 94-12 applicable to taxable years ending after Dec. 31, 1974, but to cease to apply for taxable years ending after Dec. 31, 1975, see section 305(b)(1) of Pub. L. 94-12, set out as a note under section 11 of this title.

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

Section, added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1023; amended Pub. L. 88-272, title I, §123(b), Feb. 26, 1964, 78 Stat. 29; Pub. L. 90-364, title I, §102(b), June 28, 1968, 82 Stat. 255; Pub. L. 91-53, §5(b), Aug. 7, 1969, 83 Stat. 95; Pub. L. 91-172, title VII, §701(b), Dec. 30, 1969, 83 Stat. 659, dealt with the receipt of minimum distributions by domestic corporations.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years for 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.

§ 964. Miscellaneous provisions

(a) Earnings and profits

Except as provided in section 312(k)(4), for purposes of this subpart, the earnings and profits of any foreign corporation, and the deficit in earnings and profits of any foreign corporation, for any taxable year shall be determined according to rules substantially similar to those applicable to domestic corporations, under regulations prescribed by the Secretary. In determining such earnings and profits, or the deficit in such earnings and profits, the amount of any illegal bribe, kickback, or other payment (within the meaning of section 162(c)) shall not be taken into account to decrease such earnings and profits or to increase such deficit. The payments referred to in the preceding sentence are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person.

(b) Blocked foreign income

Under regulations prescribed by the Secretary, no part of the earnings and profits of a controlled foreign corporation for any taxable year shall be included in earnings and profits for purposes of sections 952, 955, and 956, if it is established to the satisfaction of the Secretary that such part could not have been distributed by the controlled foreign corporation to United States shareholders who own (within the meaning of section 958(a)) stock of such controlled foreign corporation because of currency or other restrictions or limitations imposed under the laws of any foreign country.

(c) Records and accounts of United States shareholders

(1) Records and accounts to be maintained

The Secretary may by regulations require each person who is, or has been, a United

States shareholder of a controlled foreign corporation to maintain such records and accounts as may be prescribed by such regulations as necessary to carry out the provisions of this subpart and subpart G.

(2) Two or more persons required to maintain or furnish the same records and accounts with respect to the same foreign corporation

Where, but for this paragraph, two or more United States persons would be required to maintain or furnish the same records and accounts as may be required by regulations under paragraph (1) with respect to the same controlled foreign corporation for the same period, the Secretary may by regulations provide that the maintenance or furnishing of such records and accounts by only one such person shall satisfy the requirements of paragraph (1) for such other persons.

(d) Treatment of certain branches

(1) In general

For purposes of this chapter, section 6038, section 6046, and such other provisions as may be specified in regulations—

(A) a qualified insurance branch of a controlled foreign corporation shall be treated as a separate foreign corporation created under the laws of the foreign country with respect to which such branch qualifies under paragraph (2), and

(B) except as provided in regulations, any amount directly or indirectly transferred or credited from such branch to one or more other accounts of such controlled foreign corporation shall be treated as a dividend paid to such controlled foreign corporation.

(2) Qualified insurance branch

For purposes of paragraph (1), the term “qualified insurance branch” means any branch of a controlled foreign corporation which is licensed and predominantly engaged on a permanent basis in the active conduct of an insurance business in a foreign country if—

(A) separate books and accounts are maintained for such branch,

(B) the principal place of business of such branch is in such foreign country,

(C) such branch would be taxable under subchapter L if it were a separate domestic corporation, and

(D) an election under this paragraph applies to such branch.

An election under this paragraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.

(3) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(e) Gain on certain stock sales by controlled foreign corporations treated as dividends

(1) In general

If a controlled foreign corporation sells or exchanges stock in any other foreign corporation, gain recognized on such sale or exchange

shall be included in the gross income of such controlled foreign corporation as a dividend to the same extent that it would have been so included under section 1248(a) if such controlled foreign corporation were a United States person. For purposes of determining the amount which would have been so includible, the determination of whether such other foreign corporation was a controlled foreign corporation shall be made without regard to the preceding sentence.

(2) Same country exception not applicable

Clause (i) of section 954(c)(3)(A) shall not apply to any amount treated as a dividend by reason of paragraph (1).

(3) Clarification of deemed sales

For purposes of this subsection, a controlled foreign corporation shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such controlled foreign corporation is treated as having gain from the sale or exchange of such stock.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1027; amended Pub. L. 91-172, title IV, §442(b)(1), Dec. 30, 1969, 83 Stat. 628; Pub. L. 94-455, title X, §1065(b), title XIX, §§1901(b)(32)(B)(iii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1654, 1800, 1834; Pub. L. 97-34, title II, §206(c), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97-248, title II, §288(b)(2), Sept. 3, 1982, 96 Stat. 571; Pub. L. 100-647, title VI, §6129(a), Nov. 10, 1988, 102 Stat. 3716; Pub. L. 105-34, title XI, §1111(a), Aug. 5, 1997, 111 Stat. 968.)

REFERENCES IN TEXT

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (a), is title I of Pub. L. 95-213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd-1 to 78dd-3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

AMENDMENTS

1997—Subsec. (e). Pub. L. 105-34 added subsec. (e).

1988—Subsec. (d). Pub. L. 100-647 added subsec. (d).

1982—Subsec. (a). Pub. L. 97-248 inserted provision that payments referred to in sentence beginning “In determining such earnings and profits” are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person.

1981—Subsec. (a). Pub. L. 97-34 substituted “section 312(k)(4)” for “section 312(k)(3)”.

1976—Subsec. (a). Pub. L. 94-455, §§1065(b), 1901(b)(32)(B)(ii), 1906(b)(13)(A), struck out “or his delegate” after “Secretary”, inserted second sentence, and substituted “312(k)(3)” for “312(m)(3)” after “provided in section”.

Subsecs. (b), (c)(1), (2). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary” whenever appearing.

1969—Subsec. (a). Pub. L. 91-172 inserted reference to the exception provided for in section 312(m)(3).

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XI, §1111(c)(1), Aug. 5, 1997, 111 Stat. 969, provided that: “The amendment made by subsection (a) [amending this section] shall apply to gain recognized on transactions occurring after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title VI, §6129(b), Nov. 10, 1988, 102 Stat. 3716, provided that: “The amendment made by

subsection (a) [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1988.”

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to payments made after Sept. 3, 1982, see section 288(c) of Pub. L. 97-248, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to property placed in service after Dec. 31, 1980, in taxable years ending after that date, see section 209(a) of Pub. L. 97-34, set out as an Effective Date note under section 168 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1065(b) of Pub. L. 94-455 applicable to payments described in section 162(c) of this title made more than 30 days after Oct. 4, 1976, see section 1066(b) of Pub. L. 94-455, set out as a note under section 952 of this title.

§ 965. Temporary dividends received deduction

(a) Deduction

(1) In general

In the case of a corporation which is a United States shareholder and for which the election under this section is in effect for the taxable year, there shall be allowed as a deduction an amount equal to 85 percent of the cash dividends which are received during such taxable year by such shareholder from controlled foreign corporations.

(2) Dividends paid indirectly from controlled foreign corporations

If, within the taxable year for which the election under this section is in effect, a United States shareholder receives a cash distribution from a controlled foreign corporation which is excluded from gross income under section 959(a), such distribution shall be treated for purposes of this section as a cash dividend to the extent of any amount included in income by such United States shareholder under section 951(a)(1)(A) as a result of any cash dividend during such taxable year to—

(A) such controlled foreign corporation from another controlled foreign corporation that is in a chain of ownership described in section 958(a), or

(B) any other controlled foreign corporation in such chain of ownership from another controlled foreign corporation in such chain of ownership, but only to the extent of cash distributions described in section 959(b) which are made during such taxable year to the controlled foreign corporation from which such United States shareholder received such distribution.

(b) Limitations

(1) In general

The amount of dividends taken into account under subsection (a) shall not exceed the greater of—

(A) \$500,000,000,

(B) the amount shown on the applicable financial statement as earnings permanently reinvested outside the United States, or

(C) in the case of an applicable financial statement which fails to show a specific

amount of earnings permanently reinvested outside the United States and which shows a specific amount of tax liability attributable to such earnings, the amount equal to the amount of such liability divided by 0.35.

The amounts described in subparagraphs (B) and (C) shall be treated as being zero if there is no such statement or such statement fails to show a specific amount of such earnings or liability, as the case may be.

(2) Dividends must be extraordinary

The amount of dividends taken into account under subsection (a) shall not exceed the excess (if any) of—

(A) the cash dividends received during the taxable year by such shareholder from controlled foreign corporations, over

(B) the annual average for the base period years of—

(i) the dividends received during each base period year by such shareholder from controlled foreign corporations,

(ii) the amounts includible in such shareholder's gross income for each base period year under section 951(a)(1)(B) with respect to controlled foreign corporations, and

(iii) the amounts that would have been included for each base period year but for section 959(a) with respect to controlled foreign corporations.

The amount taken into account under clause (iii) for any base period year shall not include any amount which is not includible in gross income by reason of an amount described in clause (ii) with respect to a prior taxable year. Amounts described in subparagraph (B) for any base period year shall be such amounts as shown on the most recent return filed for such year; except that amended returns filed after June 30, 2003, shall not be taken into account.

(3) Reduction of benefit if increase in related party indebtedness

The amount of dividends which would (but for this paragraph) be taken into account under subsection (a) shall be reduced by the excess (if any) of—

(A) the amount of indebtedness of the controlled foreign corporation to any related person (as defined in section 954(d)(3)) as of the close of the taxable year for which the election under this section is in effect, over

(B) the amount of indebtedness of the controlled foreign corporation to any related person (as so defined) as of the close of October 3, 2004.

All controlled foreign corporations with respect to which the taxpayer is a United States shareholder shall be treated as 1 controlled foreign corporation for purposes of this paragraph. The Secretary may prescribe such regulations as may be necessary or appropriate to prevent the avoidance of the purposes of this paragraph, including regulations which provide that cash dividends shall not be taken into account under subsection (a) to the extent such dividends are attributable to the direct or indirect transfer (including through