

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.

§ 246A. Dividends received deduction reduced where portfolio stock is debt financed

(a) General rule

In the case of any dividend on debt-financed portfolio stock, there shall be substituted for the percentage which (but for this subsection) would be used in determining the amount of the deduction allowable under section 243 or 245(a) a percentage equal to the product of—

- (1) 70 percent (80 percent in the case of any dividend from a 20-percent owned corporation as defined in section 243(c)(2)), and
- (2) 100 percent minus the average indebtedness percentage.

(b) Section not to apply to dividends for which 100 percent dividends received deduction allowable

Subsection (a) shall not apply to—

- (1) qualifying dividends (as defined in section 243(b) without regard to section 243(d)(4)),¹ and
- (2) dividends received by a small business investment company operating under the Small Business Investment Act of 1958.

(c) Debt financed portfolio stock

For purposes of this section—

(1) In general

The term “debt financed portfolio stock” means any portfolio stock if at some time during the base period there is portfolio indebtedness with respect to such stock.

(2) Portfolio stock

The term “portfolio stock” means any stock of a corporation unless—

- (A) as of the beginning of the ex-dividend date, the taxpayer owns stock of such corporation—

- (i) possessing at least 50 percent of the total voting power of the stock of such corporation, and
 - (ii) having a value equal to at least 50 percent of the total value of the stock of such corporation, or

- (B) as of the beginning of the ex-dividend date—

- (i) the taxpayer owns stock of such corporation which would meet the requirements of subparagraph (A) if “20 percent” were substituted for “50 percent” each place it appears in such subparagraph, and

- (ii) stock meeting the requirements of subparagraph (A) is owned by 5 or fewer corporate shareholders.

(3) Special rule for stock in a bank or bank holding company

(A) In general

If, as of the beginning of the ex-dividend date, the taxpayer owns stock of any bank or bank holding company having a value

equal to at least 80 percent of the total value of the stock of such bank or bank holding company, for purposes of paragraph (2)(A)(i), the taxpayer shall be treated as owning any stock of such bank or bank holding company which the taxpayer has an option to acquire.

(B) Definitions

For purposes of subparagraph (A)—

(i) Bank

The term “bank” has the meaning given such term by section 581.

(ii) Bank holding company

The term “bank holding company” means a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956).

(4) Treatment of certain preferred stock

For purposes of determining whether the requirements of subparagraph (A) or (B) of paragraph (2) or of subparagraph (A) of paragraph (3) are met, stock described in section 1504(a)(4) shall not be taken into account.

(d) Average indebtedness percentage

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term “average indebtedness percentage” means the percentage obtained by dividing—

- (A) the average amount (determined under regulations prescribed by the Secretary) of the portfolio indebtedness with respect to the stock during the base period, by

- (B) the average amount (determined under regulations prescribed by the Secretary) of the adjusted basis of the stock during the base period.

(2) Special rule where stock not held throughout base period

In the case of any stock which was not held by the taxpayer throughout the base period, paragraph (1) shall be applied as if the base period consisted only of that portion of the base period during which the stock was held by the taxpayer.

(3) Portfolio indebtedness

(A) In general

The term “portfolio indebtedness” means any indebtedness directly attributable to investment in the portfolio stock.

(B) Certain amounts received from short sale treated as indebtedness

For purposes of subparagraph (A), any amount received from a short sale shall be treated as indebtedness for the period beginning on the day on which such amount is received and ending on the day the short sale is closed.

(4) Base period

The term “base period” means, with respect to any dividend, the shorter of—

- (A) the period beginning on the ex-dividend date for the most recent previous dividend on the stock and ending on the day before the ex-dividend date for the dividend involved, or

¹ See References in Text note below.

(B) the 1-year period ending on the day before the ex-dividend date for the dividend involved.

(e) Reduction in dividends received deduction not to exceed allocable interest

Under regulations prescribed by the Secretary, any reduction under this section in the amount allowable as a deduction under section 243 or 245 with respect to any dividend shall not exceed the amount of any interest deduction (including any deductible short sale expense) allocable to such dividend.

(f) Regulations

The regulations prescribed for purposes of this section under section 7701(f) shall include regulations providing for the disallowance of interest deductions or other appropriate treatment (in lieu of reducing the dividend received deduction) where the obligor of the indebtedness is a person other than the person receiving the dividend.

(Added Pub. L. 98-369, div. A, title I, §51(a), July 18, 1984, 98 Stat. 562; amended Pub. L. 99-514, title VI, §611(a)(4), title XVIII, §1804(a), Oct. 22, 1986, 100 Stat. 2249, 2798; Pub. L. 100-203, title X, §10221(d)(2), Dec. 22, 1987, 101 Stat. 1330-409; Pub. L. 100-647, title I, §1012(l)(1), Nov. 10, 1988, 102 Stat. 3513; Pub. L. 108-311, title IV, §408(a)(9), Oct. 4, 2004, 118 Stat. 1191; Pub. L. 113-295, div. A, title II, §221(a)(41)(F), Dec. 19, 2014, 128 Stat. 4044.)

REFERENCES IN TEXT

Section 243(d)(4), referred to in subsec. (b)(1), was repealed by Pub. L. 113-295, div. A, title II, §221(a)(41)(D), Dec. 19, 2014, 128 Stat. 4044.

The Small Business Investment Act of 1958, referred to in subsec. (b)(2), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

Section 2(a) of the Bank Holding Company Act of 1956, referred to in subsec. (c)(3)(B)(ii), is classified to section 1841(a) of Title 12, Banks and Banking.

AMENDMENTS

2014—Subsecs. (a), (e). Pub. L. 113-295 struck out “, 244,” after “section 243”.

2004—Subsec. (b)(1). Pub. L. 108-311 substituted “section 243(d)(4)” for “section 243(c)(4)”.

1988—Subsec. (a). Pub. L. 100-647 struck out at end “The preceding sentence shall be applied before any determination of a ratio under paragraph (1) or (2) of section 245(a).”

1987—Subsec. (a)(1). Pub. L. 100-203 substituted “70 percent (80 percent in the case of any dividend from a 20-percent owned corporation as defined in section 243(c)(2))” for “80 percent”.

1986—Subsec. (a). Pub. L. 99-514, §1804(a), substituted “or 245(a)” for “or 245” and inserted “The preceding sentence shall be applied before any determination of a ratio under paragraph (1) or (2) of section 245(a).”

Subsec. (a)(1). Pub. L. 99-514, §611(a)(4), substituted “80 percent” for “85 percent”.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 not applicable to preferred stock issued before Oct. 1, 1942 (determined in the same manner as under section 247 of this title as in effect before its repeal by Pub. L. 113-295), see section 221(a)(41)(K) of Pub. L. 113-295, set out as a note under section 172 of this title.

Except as otherwise provided in section 221(a) of Pub. L. 113-295, amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 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 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years ending after such date, see section 10221(e)(1) of Pub. L. 100-203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 611(a)(4) of Pub. L. 99-514 applicable to dividends received or accrued after Dec. 31, 1986, in taxable years ending after such date, see section 611(b) of Pub. L. 99-514, set out as a note under section 246 of this title.

Amendment by section 1804(a) of 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

Pub. L. 98-369, div. A, title I, §51(c), July 18, 1984, 98 Stat. 564, provided that: “The amendments made by this section [enacting this section] shall apply with respect to stock the holding period for which begins after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.”

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.

[§ 247. Repealed. Pub. L. 113-295, div. A, title II, § 221(a)(41)(A), Dec. 19, 2014, 128 Stat. 4043]

Section, Aug. 16, 1954, ch. 736, 68A Stat. 75; Pub. L. 94-455, title XIX, §1901(a)(35), Oct. 4, 1976, 90 Stat. 1770; Pub. L. 95-600, title III, §301(b)(4), Nov. 6, 1978, 92 Stat. 2820; Pub. L. 101-508, title XI, §11801(c)(8)(C), Nov. 5, 1990, 104 Stat. 1388-524; Pub. L. 104-188, title I, §1704(t)(49), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 109-135, title IV, §402(a)(5), Dec. 21, 2005, 119 Stat. 2610, allowed to public utilities as a deduction a percentage of the amount of the lesser of dividends paid during the taxable year on its preferred stock or taxable income for the taxable year under certain conditions.

EFFECTIVE DATE OF REPEAL

Repeal not applicable to preferred stock issued before Oct. 1, 1942 (determined in the same manner as under this section as in effect before its repeal by Pub. L. 113-295), see section 221(a)(41)(K) of Pub. L. 113-295, set out as an Effective Date of 2014 Amendment note under section 172 of this title.

Except as otherwise provided in section 221(a) of Pub. L. 113-295, repeal effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as an Effective Date of 2014 Amendment note under section 1 of this title.