

able years to the extent not previously taken into account under subparagraph (A).”

Subsec. (d)(2)(E). Pub. L. 100-647, §6133(b), added subpar. (E).

Subsec. (e)(1). Pub. L. 100-647, §1012(q)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “No income tax treaty between the United States and a foreign country shall exempt any foreign corporation from the tax imposed by subsection (a) (or reduce the amount thereof) unless—

“(A) such foreign corporation is a qualified resident of such foreign country, or

“(B) such foreign corporation is not a qualified resident of such foreign country but such income tax treaty permits a withholding tax on dividends described in section 861(a)(2)(B) which are paid by such foreign corporation.”

Subsec. (e)(3). Pub. L. 100-647, §1012(q)(2)(B), substituted “withholding tax” for “2nd tier withholding tax” in heading and amended text generally. Prior to amendment, text read as follows:

“(A) IN GENERAL.—If a foreign corporation is not exempt for any taxable year from the tax imposed by subsection (a) by reason of a treaty, no tax shall be imposed by section 871(a), 881(a), 1441, or 1442 on any dividends paid by such corporation during the taxable year.

“(B) LIMITATION ON CERTAIN TREATY BENEFITS.—No foreign corporation which is not a qualified resident of a foreign country shall be entitled to claim benefits under any income tax treaty between the United States and such foreign country with respect to dividends—

“(i) which are paid by such foreign corporation and with respect to which such foreign corporation is otherwise required to deduct and withhold tax under section 1441 or 1442, or

“(ii) which are received by such foreign corporation and are described in section 861(a)(2)(B).”

Subsec. (e)(4)(A)(i), (ii). Pub. L. 100-647, §1012(q)(5), substituted “50 percent or more” for “more than 50 percent” in cl. (i) and “citizens or residents of the United States” for “the United States” in cl. (ii).

Subsec. (e)(4)(C), (D). Pub. L. 100-647, §1012(q)(4), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (e)(5). Pub. L. 100-647, §1012(q)(6), added par. (5).

Subsec. (f)(1). Pub. L. 100-647, §1012(f)(3)(A), (14), substituted “this subtitle” for “sections 871, 881, 1441, and 1442” and inserted “(or having gross income treated as effectively connected with the conduct of a trade or business in the United States)” after “United States”.

Pub. L. 100-647, §1012(q)(2)(C)(i), (3)(B), inserted sentence at end and struck out former last sentence which read as follows: “Rules similar to the rules of subsection (e)(3)(B) shall apply to interest described in the preceding sentence.”

Subsec. (f)(3). Pub. L. 100-647, §1012(q)(2)(C)(ii), added par. (3).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1704(f)(3)(B) of Pub. L. 104-188 provided that: “The amendments made by subparagraph (A) [amending this section] shall take effect as if included in the amendments made by section 1241(a) of the Tax Reform Act of 1986 [Pub. L. 99-514].”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(q)(1)(A), (2)–(6), (14) of 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.

Amendment by section 6133(b) of Pub. L. 100-647 applicable to taxable years beginning after Dec. 31, 1988, see section 6133(c) of Pub. L. 100-647, set out as a note under section 882 of this title.

EFFECTIVE DATE

Section 1241(e) of Pub. L. 99-514 provided that: “The amendments made by this section [enacting section 884

of this title, renumbering former section 884 as section 885 of this title, and amending sections 861 and 906 of this title] shall apply to taxable years beginning after December 31, 1986.”

DETERMINATION OF EARNINGS AND PROFITS OF FOREIGN CORPORATIONS

Section 1012(q)(1)(B) of Pub. L. 100-647, as amended by Pub. L. 101-239, title VII, §7811(i)(5), Dec. 19, 1989, 103 Stat. 2410, provided that: “For purposes of applying section 884 of the 1986 Code, the earnings and profits of any corporation shall be determined without regard to any increase in earnings and profits under sections 1023(e)(3)(C) [section 1023(e)(3)(C) of Pub. L. 99-514, set out as an Effective Date note under section 846 of this title] and 1021(c)(2)(C) of the Reform Act [Pub. L. 99-514, set out as an Effective Date of 1986 Amendment note under section 832 of this title] or arising from section 832(b)(4)(C) of the 1986 Code.”

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

For nonapplication of amendment by section 1241(a) of Pub. L. 99-514 (enacting this section) to the extent application of such amendment would be contrary to 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)(3), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

§ 885. Cross references

(1) For special provisions relating to foreign corporations carrying on an insurance business within the United States, see section 842.

(2) For rules applicable in determining whether any foreign corporation is engaged in trade or business within the United States, see section 864(b).

(3) For adjustment of tax in case of corporations of certain foreign countries, see section 896.

(4) For allowance of credit against the tax in case of a foreign corporation having income effectively connected with the conduct of a trade or business within the United States, see section 906.

(5) For withholding at source of tax on income of foreign corporations, see section 1442.

(Aug. 16, 1954, ch. 736, 68A Stat. 283, §884; Pub. L. 89-809, title I, §104(m)(1), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 91-172, title I, §101(j)(21), Dec. 30, 1969, 83 Stat. 528; renumbered §885, Pub. L. 99-514, title XII, §1241(a), Oct. 22, 1986, 100 Stat. 2576.)

AMENDMENTS

1986—Pub. L. 99-514 renumbered section 884 of this title as this section.

1969—Pub. L. 91-172 redesignated pars. (2) to (6) as (1) to (5), respectively. Former par. (1), referring to section 512(a), was struck out.

1966—Par. (1). Pub. L. 89-809 redesignated par. (4) as (1). Former par. (1) redesignated (6).

Par. (2). Pub. L. 89-809 redesignated par. (3) as (2) and substituted “foreign corporations carrying on an insurance business within the United States, see section 842” for “foreign insurance companies, see subchapter L (sec. 801 and following)”. Former par. (2) redesignated (3).

Par. (3). Pub. L. 89-809 redesignated former par. (2) as (3) and, in par. (3) as so redesignated, substituted “section 864(b)” for “section 871(c)”. Former par. (3) redesignated (2).

Pars. (4), (5). Pub. L. 89-809 added pars. (4) and (5). Former par. (4) redesignated (1).

Par. (6). Pub. L. 89-809 redesignated former par. (1) as (6).

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 101(k)(2)(B) of Pub. L. 91-172, set out as an Effective Date note under section 4940 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

SUBPART C—TAX ON GROSS TRANSPORTATION INCOME

Sec.

887. Imposition of tax on gross transportation income of nonresident aliens and foreign corporations.

§ 887. Imposition of tax on gross transportation income of nonresident aliens and foreign corporations

(a) Imposition of tax

In the case of any nonresident alien individual or foreign corporation, there is hereby imposed for each taxable year a tax equal to 4 percent of such individual's or corporation's United States source gross transportation income for such taxable year.

(b) United States source gross transportation income

(1) In general

Except as provided in paragraphs (2) and (3), the term "United States source gross transportation income" means any gross income which is transportation income (as defined in section 863(c)(3)) to the extent such income is treated as from sources in the United States under section 863(c)(2). To the extent provided in regulations, such term does not include any income of a kind to which an exemption under paragraph (1) or (2) of section 883(a) would not apply.

(2) Exception for certain income effectively connected with business in the United States

The term "United States source gross transportation income" shall not include any income taxable under section 871(b) or 882.

(3) Exception for certain income taxable in possessions

The term "United States source gross transportation income" does not include any income taxable in a possession of the United States under the provisions of this title as made applicable in such possession.

(4) Determination of effectively connected income

For purposes of this chapter, United States source gross transportation income of any taxpayer shall not be treated as effectively connected with the conduct of a trade or business in the United States unless—

(A) the taxpayer has a fixed place of business in the United States involved in the earning of United States source gross transportation income, and

(B) substantially all of the United States source gross transportation income (deter-

mined without regard to paragraph (2)) of the taxpayer is attributable to regularly scheduled transportation (or, in the case of income from the leasing of a vessel or aircraft, is attributable to a fixed place of business in the United States).

(c) Coordination with other provisions

Any income taxable under this section shall not be taxable under section 871, 881, or 882.

(Added Pub. L. 99-514, title XII, § 1212(b)(1), Oct. 22, 1986, 100 Stat. 2537; amended Pub. L. 100-647, title I, § 1012(e)(6), Nov. 10, 1988, 102 Stat. 3500; Pub. L. 101-239, title VII, § 7811(i)(8)(A), (B), (9), Dec. 19, 1989, 103 Stat. 2410, 2411.)

AMENDMENTS

1989—Subsec. (b)(1). Pub. L. 101-239, § 7811(i)(8)(B), substituted "paragraphs (2) and (3)" for "paragraph (2)".

Subsec. (b)(3). Pub. L. 101-239, § 7811(i)(8)(A), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 101-239, § 7811(i)(8)(A), (9), redesignated former par. (3) as (4) and substituted "United States source gross transportation income" for "transportation income" in introductory provisions and in subpar. (A).

1988—Subsec. (b)(1). Pub. L. 100-647 substituted "under section 863(c)(2)" for "under section 863(c)" and inserted at end "To the extent provided in regulations, such term does not include any income of a kind to which an exemption under paragraph (1) or (2) of section 883(a) would not apply."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, 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

Section applicable to taxable years beginning after Dec. 31, 1986, see section 1212(f) of Pub. L. 99-514, set out as an Effective Date of 1986 Amendment note under section 863 of this title.

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

For nonapplication of amendment by section 1212(b)(1) of Pub. L. 99-514 (enacting this section) to the extent application of such amendment would be contrary to 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)(3), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

SUBPART D—MISCELLANEOUS PROVISIONS

Sec.

891. Doubling of rates of tax on citizens and corporations of certain foreign countries.

892. Income of foreign governments and of international organizations.

893. Compensation of employees of foreign governments or international organizations.