

such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

§ 894. Income affected by treaty

(a) Treaty provisions

(1) In general

The provisions of this title shall be applied to any taxpayer with due regard to any treaty obligation of the United States which applies to such taxpayer.

(2) Cross reference

For relationship between treaties and this title, see section 7852(d).

(b) Permanent establishment in United States

For purposes of applying any exemption from, or reduction of, any tax provided by any treaty to which the United States is a party with respect to income which is not effectively connected with the conduct of a trade or business within the United States, a nonresident alien individual or a foreign corporation shall be deemed not to have a permanent establishment in the United States at any time during the taxable year. This subsection shall not apply in respect of the tax computed under section 877(b).

(c) Denial of treaty benefits for certain payments through hybrid entities

(1) Application to certain payments

A foreign person shall not be entitled under any income tax treaty of the United States with a foreign country to any reduced rate of any withholding tax imposed by this title on an item of income derived through an entity which is treated as a partnership (or is otherwise treated as fiscally transparent) for purposes of this title if—

(A) such item is not treated for purposes of the taxation laws of such foreign country as an item of income of such person,

(B) the treaty does not contain a provision addressing the applicability of the treaty in the case of an item of income derived through a partnership, and

(C) the foreign country does not impose tax on a distribution of such item of income from such entity to such person.

(2) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to determine the extent to which a taxpayer to which paragraph (1) does not apply shall not be entitled to benefits under any income tax treaty of the United States with respect to any payment received by, or income attributable to any activities of, an entity organized in any jurisdiction (including the United States) that is treated as a partnership or is otherwise treated as fiscally transparent for purposes of this title (including a common investment trust under section 584, a grantor trust, or an entity that is disregarded for purposes of this title) and is treated as fiscally nontransparent for purposes of the tax laws of the jurisdiction of residence of the taxpayer.

(Aug. 16, 1954, ch. 736, 68A Stat. 284; Pub. L. 89-809, title I, § 105(a), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 100-647, title I, § 1012(aa)(6), Nov. 10, 1988,

102 Stat. 3533; Pub. L. 105-34, title X, § 1054(a), Aug. 5, 1997, 111 Stat. 943.)

AMENDMENTS

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

1988—Subsec. (a). Pub. L. 100-647 substituted “Treaty provisions” for “Income affected by treaty” in heading and amended text generally. Prior to amendment, text read as follows: “Income of any kind, to the extent required by any treaty obligation of the United States, shall not be included in gross income and shall be exempt from taxation under this subtitle.”

1966—Pub. L. 89-809 designated existing provisions as subsec. (a), added subsec. (b), and substituted “affected by treaty” for “exempt under treaty” in section catchline.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title X, § 1054(b), Aug. 5, 1997, 111 Stat. 944, provided that: “The amendments made by this section [amending this section] shall apply upon the date of 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 1966 AMENDMENT

Pub. L. 89-809, title I, § 105(d), Nov. 13, 1966, 80 Stat. 1565, provided that: “The amendments made by this section (other than subsections (d) and (f)) [amending this section and enacting section 896 of this title] shall apply with respect to taxable years beginning after December 31, 1966.”

§ 895. Income derived by a foreign central bank of issue from obligations of the United States or from bank deposits

Income derived by a foreign central bank of issue from obligations of the United States or of any agency or instrumentality thereof (including beneficial interests, participations, and other instruments issued under section 302(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717)) which are owned by such foreign central bank of issue, or derived from interest on deposits with persons carrying on the banking business, shall not be included in gross income and shall be exempt from taxation under this subtitle unless such obligations or deposits are held for, or used in connection with, the conduct of commercial banking functions or other commercial activities. For purposes of the preceding sentence the Bank for International Settlements shall be treated as a foreign central bank of issue.

(Added Pub. L. 87-29, § 1(a), May 4, 1961, 75 Stat. 64; amended Pub. L. 89-809, title I, § 102(a)(4)(A), Nov. 13, 1966, 80 Stat. 1543.)

AMENDMENTS

1966—Pub. L. 89-809 exempted income derived from obligations of agencies or instrumentalities of the United States and income derived from interest on deposits with persons carrying on the banking business, inserted “(including beneficial interests, participations, and other instruments issued under section 302(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717)),” and inserted sentence requiring the Bank for International Settlements to be treated as a foreign central bank of issue.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, except that in applying section 864(c)(4)(B)(iii) of this title with respect to a binding contract entered into on or before Feb. 24, 1966, activities in the United States on or before such date in negotiating or carrying out such contract shall not be taken into account, see section 102(e)(1) of Pub. L. 89-809, set out as a note under section 861 of this title.

EFFECTIVE DATE

Pub. L. 87-29, §1(c), May 4, 1961, 75 Stat. 64, provided that: "The amendments made by subsections (a) and (b) [enacting this section and amending analysis preceding section 891 of this title] shall be effective with respect to income received in taxable years beginning after December 31, 1960."

§ 896. Adjustment of tax on nationals, residents, and corporations of certain foreign countries

(a) Imposition of more burdensome taxes by foreign country

Whenever the President finds that—

(1) under the laws of any foreign country, considering the tax system of such foreign country, citizens of the United States not residents of such foreign country or domestic corporations are being subjected to more burdensome taxes, on any item of income received by such citizens or corporations from sources within such foreign country, than taxes imposed by the provisions of this subtitle on similar income derived from sources within the United States by residents or corporations of such foreign country,

(2) such foreign country, when requested by the United States to do so, has not acted to revise or reduce such taxes so that they are no more burdensome than taxes imposed by the provisions of this subtitle on similar income derived from sources within the United States by residents or corporations of such foreign country, and

(3) it is in the public interest to apply pre-1967 tax provisions in accordance with the provisions of this subsection to residents or corporations of such foreign country,

the President shall proclaim that the tax on such similar income derived from sources within the United States by residents or corporations of such foreign country shall, for taxable years beginning after such proclamation, be determined under this subtitle without regard to amendments made to this subchapter and chapter 3 on or after the date of enactment of this section.

(b) Imposition of discriminatory taxes by foreign country

Whenever the President finds that—

(1) under the laws of any foreign country, citizens of the United States or domestic corporations (or any class of such citizens or corporations) are, with respect to any item of income, being subjected to a higher effective rate of tax than are nationals, residents, or corporations of such foreign country (or a similar class of such nationals, residents, or corporations) under similar circumstances;

(2) such foreign country, when requested by the United States to do so, has not acted to

eliminate such higher effective rate of tax; and

(3) it is in the public interest to adjust, in accordance with the provisions of this subsection, the effective rate of tax imposed by this subtitle on similar income of nationals, residents, or corporations of such foreign country (or such similar class of such nationals, residents, or corporations),

the President shall proclaim that the tax on similar income of nationals, residents, or corporations of such foreign country (or such similar class of such nationals, residents, or corporations) shall, for taxable years beginning after such proclamation, be adjusted so as to cause the effective rate of tax imposed by this subtitle on such similar income to be substantially equal to the effective rate of tax imposed by such foreign country on such item of income of citizens of the United States or domestic corporations (or such class of citizens or corporations). In implementing a proclamation made under this subsection, the effective rate of tax imposed by this subtitle on an item of income may be adjusted by the disallowance, in whole or in part, of any deduction, credit, or exemption which would otherwise be allowed with respect to that item of income or by increasing the rate of tax otherwise applicable to that item of income.

(c) Alleviation of more burdensome or discriminatory taxes

Whenever the President finds that—

(1) the laws of any foreign country with respect to which the President has made a proclamation under subsection (a) have been modified so that citizens of the United States not residents of such foreign country or domestic corporations are no longer subject to more burdensome taxes on the item of income derived by such citizens or corporations from sources within such foreign country, or

(2) the laws of any foreign country with respect to which the President has made a proclamation under subsection (b) have been modified so that citizens of the United States or domestic corporations (or any class of such citizens or corporations) are no longer subject to a higher effective rate of tax on the item of income,

he shall proclaim that the tax imposed by this subtitle on the similar income of nationals, residents, or corporations of such foreign country shall, for any taxable year beginning after such proclamation, be determined under this subtitle without regard to such subsection.

(d) Notification of Congress required

No proclamation shall be issued by the President pursuant to this section unless, at least 30 days prior to such proclamation, he has notified the Senate and the House of Representatives of his intention to issue such proclamation.

(e) Implementation by regulations

The Secretary shall prescribe such regulations as he deems necessary or appropriate to implement this section.

(Added Pub. L. 89-809, title I, §105(b), Nov. 13, 1966, 80 Stat. 1563; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)