

“(1) IN GENERAL.—Any taxes paid or accrued in a taxable year beginning after 1986 may be treated under section 904(c) of the Internal Revenue Code of 1954 as paid or accrued in a taxable year beginning before 1987 only to the extent such taxes would be so treated if the tax imposed by chapter 1 of such Code for the taxable year beginning after 1986 were determined by applying section 1 or 11 of such Code (as the case may be) as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986].

“(2) ADJUSTMENTS.—Under regulations prescribed by the Secretary of the Treasury or his delegate proper adjustments shall be made in the application of paragraph (1) to take into account—

“(A) the repeal of the zero bracket amount, and

“(B) the changes in the treatment of capital gains.

“(b) COORDINATION WITH SEPARATE BASKETS.—Any taxes paid or accrued in a taxable year beginning after 1986 which (after the application of subsection (a)) are treated as paid or accrued in a taxable year beginning before 1987 shall be treated as imposed on income described in section 904(d)(1)(E) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]). No taxes paid or accrued in a taxable year beginning after 1986 with respect to high withholding tax interest (as defined in section 904(d)(2)(B) of the Internal Revenue Code of 1986 as amended by this Act) may be treated as paid or accrued in a taxable year beginning before 1987.”

#### COORDINATION WITH TREATY OBLIGATIONS

Pub. L. 99-514, title XVIII, §1810(a)(4), Oct. 22, 1986, 100 Stat. 2822, provided that: “Section 904(g) of the Internal Revenue Code of 1954 shall apply notwithstanding any treaty obligation of the United States to the contrary (whether entered into on, before, or after the date of the enactment of this Act [Oct. 22, 1986]) unless (in the case of a treaty entered into after the date of the enactment of this Act) such treaty by specific reference to such section 904(g) clearly expresses the intent to override the provisions of such section.”

#### SEPARATE APPLICATION OF SECTION 904 IN CASE OF INCOME COVERED BY TRANSITIONAL RULES

Pub. L. 99-514, title XVIII, §1810(a)(5), Oct. 22, 1986, 100 Stat. 2823, as amended by Pub. L. 100-647, title I, §1018(g)(1), Nov. 10, 1988, 102 Stat. 3582, provided that: “For purposes of section 121(b)(5) of the Tax Reform Act of 1984 [Pub. L. 98-369, set out above] (relating to separate application of section 904 [of the Internal Revenue Code of 1954 [now 1986]] in case of income covered by transitional rules), any carryover under section 904(c) of the Internal Revenue Code of 1954 [now 1986] allowed to a taxpayer which was incorporated on August 31, 1962, attributable to taxes paid or accrued in taxable years beginning in 1981, 1982, 1983, or 1984, with respect to amounts included in gross income under section 951 of such Code in respect of a controlled foreign corporation which was incorporated on May 27, 1977, shall be treated as taxes paid or accrued on income separately treated under such section 121(b)(5).”

### § 905. Applicable rules

#### (a) Year in which credit taken

The credits provided in this subpart may, at the option of the taxpayer and irrespective of the method of accounting employed in keeping his books, be taken in the year in which the taxes of the foreign country or the possession of the United States accrued, subject, however, to the conditions prescribed in subsection (c). If the taxpayer elects to take such credits in the year in which the taxes of the foreign country or the possession of the United States accrued, the credits for all subsequent years shall be taken on the same basis, and no portion of any such

taxes shall be allowed as a deduction in the same or any succeeding year.

#### (b) Proof of credits

The credits provided in this subpart shall be allowed only if the taxpayer establishes to the satisfaction of the Secretary—

(1) the total amount of income derived from sources without the United States, determined as provided in part I,

(2) the amount of income derived from each country, the tax paid or accrued to which is claimed as a credit under this subpart, such amount to be determined under regulations prescribed by the Secretary, and

(3) all other information necessary for the verification and computation of such credits.

#### (c) Adjustments to accrued taxes

##### (1) In general

If—

(A) accrued taxes when paid differ from the amounts claimed as credits by the taxpayer,

(B) accrued taxes are not paid before the date 2 years after the close of the taxable year to which such taxes relate, or

(C) any tax paid is refunded in whole or in part,

the taxpayer shall notify the Secretary, who shall redetermine the amount of the tax for the year or years affected. The Secretary may prescribe adjustments to the pools of post-1986 foreign income taxes and the pools of post-1986 undistributed earnings under sections 902 and 960 in lieu of the redetermination under the preceding sentence.

##### (2) Special rule for taxes not paid within 2 years

###### (A) In general

Except as provided in subparagraph (B), in making the redetermination under paragraph (1), no credit shall be allowed for accrued taxes not paid before the date referred to in subparagraph (B) of paragraph (1).

###### (B) Taxes subsequently paid

Any such taxes if subsequently paid—

(i) shall be taken into account—

(I) in the case of taxes deemed paid under section 902 or section 960, for the taxable year in which paid (and no redetermination shall be made under this section by reason of such payment), and

(II) in any other case, for the taxable year to which such taxes relate, and

(ii) shall be translated as provided in section 986(a)(2)(A).

##### (3) Adjustments

The amount of tax (if any) due on any redetermination under paragraph (1) shall be paid by the taxpayer on notice and demand by the Secretary, and the amount of tax overpaid (if any) shall be credited or refunded to the taxpayer in accordance with subchapter B of chapter 66 (section 6511 et seq.).

##### (4) Bond requirements

In the case of any tax accrued but not paid, the Secretary, as a condition precedent to the

allowance of the credit provided in this subpart, may require the taxpayer to give a bond, with sureties satisfactory to and approved by the Secretary, in such sum as the Secretary may require, conditioned on the payment by the taxpayer of any amount of tax found due on any such redetermination. Any such bond shall contain such further conditions as the Secretary may require.

**(5) Other special rules**

In any redetermination under paragraph (1) by the Secretary of the amount of tax due from the taxpayer for the year or years affected by a refund, the amount of the taxes refunded for which credit has been allowed under this section shall be reduced by the amount of any tax described in section 901 imposed by the foreign country or possession of the United States with respect to such refund; but no credit under this subpart, or deduction under section 164, shall be allowed for any taxable year with respect to any such tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country or possession of the United States on such refund for such period.

(Aug. 16, 1954, ch. 736, 68A Stat. 288; Pub. L. 85-866, title I, §103(b), Sept. 2, 1958, 72 Stat. 1675; Pub. L. 94-455, title XIX, §§1901(a)(114), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1784, 1834; Pub. L. 96-603, §2(c)(1), Dec. 28, 1980, 94 Stat. 3509; Pub. L. 97-248, title III, §343(a), Sept. 3, 1982, 96 Stat. 635; Pub. L. 105-34, title XI, §1102(a)(2), Aug. 5, 1997, 111 Stat. 964.)

**AMENDMENTS**

1997—Subsec. (c). Pub. L. 105-34 amended heading and text of subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “If accrued taxes when paid differ from the amounts claimed as credits by the taxpayer, or if any tax paid is refunded in whole or in part, the taxpayer shall notify the Secretary, who shall redetermine the amount of the tax for the year or years affected. The amount of tax due on such redetermination, if any, shall be paid by the taxpayer on notice and demand by the Secretary, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with subchapter B of chapter 66 (sec. 6511 and following). In the case of such a tax accrued but not paid, the Secretary, as a condition precedent to the allowance of this credit, may require the taxpayer to give a bond, with sureties satisfactory to and to be approved by the Secretary, in such sum as the Secretary may require, conditioned on the payment by the taxpayer of any amount of tax found due on any such redetermination; and the bond herein prescribed shall contain such further conditions as the Secretary may require. In such redetermination by the Secretary of the amount of tax due from the taxpayer for the year or years affected by a refund, the amount of the taxes refunded for which credit has been allowed under this section shall be reduced by the amount of any tax described in section 901 imposed by the foreign country or possession of the United States with respect to such refund; but no credit under this subpart, and no deduction under section 164 (relating to deduction for taxes) shall be allowed for any taxable year with respect to such tax imposed on the refund. No interest shall be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a re-

fund to the taxpayer, for any period before the receipt of such refund, except to the extent interest was paid by the foreign country or possession of the United States on such refund for such period.”

1982—Subsec. (c). Pub. L. 97-248, §343(a), struck out provision that, although no interest can be assessed or collected on any amount of tax due on any redetermination by the Secretary, resulting from a refund to the taxpayer, for any period before the receipt of such refund, except to the extent interest has been paid by the foreign country or possession of the United States on such refund for such period, that prohibition does not apply (with respect to any period after the refund or adjustment in the foreign taxes) if the taxpayer fails to notify the Secretary (on or before the date prescribed by regulations for giving such notice) unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

1980—Subsec. (c). Pub. L. 96-603 inserted provision that the preceding sentence not apply, with respect to any period after the refund or adjustment in the foreign taxes, if the taxpayer fails to notify the Secretary, on or before the date prescribed by regulations for giving such notice, unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

1976—Subsec. (b). Pub. L. 94-455, §§1901(a)(114), 1906(b)(13)(A), struck out provision allowing credits to be taken for tax on royalties paid, accrued and derived from sources within the United Kingdom of Britain and Northern Ireland and struck out “or his delegate” after “Secretary”, in two places.

Subsec. (c). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary” in eight places.

1958—Subsec. (b). Pub. L. 85-866 inserted sentence deeming recipient of a royalty or other amount for use of copyright, patent, and other like property derived from sources within United Kingdom, to have paid or accrued taxes paid or accrued to United Kingdom with respect to royalty if recipient elects to include in its gross income the amount of such United Kingdom tax.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Pub. L. 105-34, title XI, §1102(c)(2), Aug. 5, 1997, 111 Stat. 966, provided that: “The amendment made by subsection (a)(2) [amending this section] shall apply to taxes which relate to taxable years beginning after December 31, 1997.”

**EFFECTIVE DATE OF 1982 AMENDMENT**

Pub. L. 97-248, title III, §343(b), Sept. 3, 1982, 96 Stat. 635, provided that: “The amendment made by subsection (a) [amending this section] shall have the same effect as if the last sentence of section 905(c) had never been enacted.”

**EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96-603 applicable with respect to employer contributions or accruals for taxable years beginning after Dec. 31, 1979, election to apply amendments retroactively with respect to foreign subsidiaries, allowance or prior deductions in case of certain funded branch plans, and manner for making elections, see section 2(e) of Pub. L. 96-603, set out as an Effective Date note under section 404A of this title.

**EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by section 1901(a)(114) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

**EFFECTIVE DATE OF 1958 AMENDMENT**

Pub. L. 85-866, title I, §103(c), Sept. 2, 1958, 72 Stat. 1675, provided that: “The amendment made by subsection (a) of this section [amending section 131(e) of Internal Revenue Code of 1939] shall apply for all taxable years beginning on or after January 1, 1950, as to which section 131 of the Internal Revenue Code of 1939 is the applicable provision. The amendment made by

subsection (b) of this section [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954. No interest shall be allowed or paid on any overpayment resulting from the amendments made by subsections (a) and (b) of this section."

### § 906. Nonresident alien individuals and foreign corporations

#### (a) Allowance of credit

A nonresident alien individual or a foreign corporation engaged in trade or business within the United States during the taxable year shall be allowed a credit under section 901 for the amount of any income, war profits, and excess profits taxes paid or accrued during the taxable year (or deemed, under section 902, paid or accrued during the taxable year) to any foreign country or possession of the United States with respect to income effectively connected with the conduct of a trade or business within the United States.

#### (b) Special rules

(1) For purposes of subsection (a) and for purposes of determining the deductions allowable under sections 873(a) and 882(c), in determining the amount of any tax paid or accrued to any foreign country or possession there shall not be taken into account any amount of tax to the extent the tax so paid or accrued is imposed with respect to income from sources within the United States which would not be taxed by such foreign country or possession but for the fact that—

(A) in the case of a nonresident alien individual, such individual is a citizen or resident of such foreign country or possession, or

(B) in the case of a foreign corporation, such corporation was created or organized under the law of such foreign country or possession or is domiciled for tax purposes in such country or possession.

(2) For purposes of subsection (a), in applying section 904 the taxpayer's taxable income shall be treated as consisting only of the taxable income effectively connected with the taxpayer's conduct of a trade or business within the United States.

(3) The credit allowed pursuant to subsection (a) shall not be allowed against any tax imposed by section 871(a) (relating to income of nonresident alien individual not connected with United States business) or 881 (relating to income of foreign corporations not connected with United States business).

(4) For purposes of sections 902(a) and 78, a foreign corporation choosing the benefits of this subpart which receives dividends shall, with respect to such dividends, be treated as a domestic corporation.

(5) For purposes of section 902, any income, war profits, and excess profits taxes paid or accrued (or deemed paid or accrued) to any foreign country or possession of the United States with respect to income effectively connected with the conduct of a trade or business within the United States shall not be taken into account, and any accumulated profits attributable to such income shall not be taken into account.

(6) No credit shall be allowed under this section against the tax imposed by section 884.

(Added Pub. L. 89-809, title I, § 106(a)(1), Nov. 13, 1966, 80 Stat. 1568; amended Pub. L. 98-369, div. A, title VIII, § 801(d)(3), July 18, 1984, 98 Stat. 996; Pub. L. 99-514, title XII, § 1241(c), title XVIII, § 1876(d)(3), Oct. 22, 1986, 100 Stat. 2580, 2899; Pub. L. 100-647, title I, § 1012(q)(10), Nov. 10, 1988, 102 Stat. 3524; Pub. L. 110-172, § 11(g)(11), Dec. 29, 2007, 121 Stat. 2490.)

#### AMENDMENTS

2007—Subsec. (b)(5) to (7). Pub. L. 110-172 redesignated pars. (6) and (7) as (5) and (6), respectively, and struck out former par. (5) which read as follows: "No credit shall be allowed under this section for any income, war profits, and excess profits taxes paid or accrued with respect to the foreign trade income (within the meaning of section 923(b)) of a FSC."

1988—Subsec. (b)(6), (7). Pub. L. 100-647 redesignated par. (6), relating to credit against tax imposed by section 884, as (7).

1986—Subsec. (b)(6). Pub. L. 99-514, § 1876(d)(3), added par. (6) relating to credit for income, war profits, and excess profits taxes paid or accrued to a foreign country or possession of the United States.

Pub. L. 99-514, § 1241(c), added par. (6) relating to credit against tax imposed by section 884.

1984—Subsec. (b)(5). Pub. L. 98-369 added par. (5).

#### 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 section 1241(c) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1241(e) of Pub. L. 99-514, set out as an Effective Date note under section 884 of this title.

Amendment by section 1876(d)(3) 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 OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, as amended, set out as a note under section 245 of this title.

#### EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1966, and, in applying section 904 of this title with respect to this section, no amount to be carried from or to any taxable year beginning before Jan. 1, 1967, and no such year to be taken into account, see section 106(a)(6) of Pub. L. 89-809, set out as an Effective Date of 1966 Amendment note under section 874 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.