

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. A, title I, §134(c), Dec. 19, 2014, 128 Stat. 4019, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2013, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.”

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-240, title III, §322(c), Jan. 2, 2013, 126 Stat. 2332, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2011, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.”

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title VII, §750(c), Dec. 17, 2010, 124 Stat. 3320, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.”

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-147, title VI, §614(c), Mar. 9, 2002, 116 Stat. 62, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years beginning after December 31, 2001.”

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-170, title V, §503(c), Dec. 17, 1999, 113 Stat. 1921, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years beginning after December 31, 1999.”

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

Pub. L. 100-647, title I, §1012(i)(3)(C), Nov. 10, 1988, 102 Stat. 3508, provided that: “The amendments made by this paragraph [amending this section] to the extent such amendments add the phrase ‘(directly or indirectly)’ shall apply only to taxable years beginning after December 31, 1987.”

Amendment by section 1012(i)(1), (2), (4), (5), (7)-(9), (21) 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.

Pub. L. 100-647, title VI, §6135(b), Nov. 10, 1988, 102 Stat. 3723, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1987.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99-514, set out as a note under section 954 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of

Pub. L. 98-369, set out as an Effective Date note under section 801 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.

§ 954. Foreign base company income**(a) Foreign base company income**

For purposes of section 952(a)(2), the term “foreign base company income” means for any taxable year the sum of—

(1) the foreign personal holding company income for the taxable year (determined under subsection (c) and reduced as provided in subsection (b)(5)),

(2) the foreign base company sales income for the taxable year (determined under subsection (d) and reduced as provided in subsection (b)(5)),

(3) the foreign base company services income for the taxable year (determined under subsection (e) and reduced as provided in subsection (b)(5)),

[(4) Repealed. Pub. L. 108-357, title IV, §415(a)(1), Oct. 22, 2004, 118 Stat. 1511]

(5) the foreign base company oil related income for the taxable year (determined under subsection (g) and reduced as provided in subsection (b)(5)).

(b) Exclusion and special rules

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

[(2) Repealed. Pub. L. 99-514, title XII, §1221(c)(1), Oct. 22, 1986, 100 Stat. 2553]

(3) De minimis, etc., rules

For purposes of subsection (a) and section 953—

(A) De minimis rule

If the sum of foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year is less than the lesser of—

- (i) 5 percent of gross income, or
- (ii) \$1,000,000,

no part of the gross income for the taxable year shall be treated as foreign base company income or insurance income.

(B) Foreign base company income and insurance income in excess of 70 percent of gross income

If the sum of the foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year exceeds 70 percent of gross income, the entire gross income for the taxable year shall, subject to the provisions of paragraphs (4) and (5), be treated as foreign base company income or insurance income (whichever is appropriate).

(C) Gross insurance income

For purposes of subparagraphs (A) and (B), the term “gross insurance income” means any item of gross income taken into account

in determining insurance income under section 953.

(4) Exception for certain income subject to high foreign taxes

For purposes of subsection (a) and section 953, foreign base company income and insurance income shall not include any item of income received by a controlled foreign corporation if the taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11. The preceding sentence shall not apply to foreign base company oil-related income described in subsection (a)(5).

(5) Deductions to be taken into account

For purposes of subsection (a), the foreign personal holding company income, the foreign base company sales income, the foreign base company services income,¹ and the foreign base company oil related income shall be reduced, under regulations prescribed by the Secretary so as to take into account deductions (including taxes) properly allocable to such income. Except to the extent provided in regulations prescribed by the Secretary, any interest which is paid or accrued by the controlled foreign corporation to any United States shareholder in such corporation (or any controlled foreign corporation related to such a shareholder) shall be allocated first to foreign personal holding company income which is passive income (within the meaning of section 904(d)(2)) of such corporation to the extent thereof. The Secretary may, by regulations, provide that the preceding sentence shall apply also to interest paid or accrued to other persons.

(6) Foreign base company oil related income not treated as another kind of base company income

Income of a corporation which is foreign base company oil related income shall not be considered foreign base company income of such corporation under paragraph (2),² or (3) of subsection (a).

(c) Foreign personal holding company income

(1) In general

For purposes of subsection (a)(1), the term “foreign personal holding company income” means the portion of the gross income which consists of:

(A) Dividends, etc.

Dividends, interest, royalties, rents, and annuities.

(B) Certain property transactions

The excess of gains over losses from the sale or exchange of property—

- (i) which gives rise to income described in subparagraph (A) (after application of paragraph (2)(A)) other than property which gives rise to income not treated as foreign personal holding company income

by reason of subsection (h) or (i) for the taxable year,

- (ii) which is an interest in a trust, partnership, or REMIC, or
- (iii) which does not give rise to any income.

Gains and losses from the sale or exchange of any property which, in the hands of the controlled foreign corporation, is property described in section 1221(a)(1) shall not be taken into account under this subparagraph.

(C) Commodities transactions

The excess of gains over losses from transactions (including futures, forward, and similar transactions) in any commodities. This subparagraph shall not apply to gains or losses which—

- (i) arise out of commodity hedging transactions (as defined in paragraph (5)(A)),
- (ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation’s commodities are property described in paragraph (1), (2), or (8) of section 1221(a), or
- (iii) are foreign currency gains or losses (as defined in section 988(b)) attributable to any section 988 transactions.

(D) Foreign currency gains

The excess of foreign currency gains over foreign currency losses (as defined in section 988(b)) attributable to any section 988 transactions. This subparagraph shall not apply in the case of any transaction directly related to the business needs of the controlled foreign corporation.

(E) Income equivalent to interest

Any income equivalent to interest, including income from commitment fees (or similar amounts) for loans actually made.

(F) Income from notional principal contracts

(i) In general

Net income from notional principal contracts.

(ii) Coordination with other categories of foreign personal holding company income

Any item of income, gain, deduction, or loss from a notional principal contract entered into for purposes of hedging any item described in any preceding subparagraph shall not be taken into account for purposes of this subparagraph but shall be taken into account under such other subparagraph.

(G) Payments in lieu of dividends

Payments in lieu of dividends which are made pursuant to an agreement to which section 1058 applies.

(H) Personal service contracts

(i) Amounts received under a contract under which the corporation is to furnish personal services if—

- (I) some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or

¹ So in original.

² So in original. The comma probably should not appear.

(II) the individual who is to perform the services is designated (by name or by description) in the contract, and

(ii) amounts received from the sale or other disposition of such a contract.

This subparagraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(2) Exception for certain amounts

(A) Rents and royalties derived in active business

Foreign personal holding company income shall not include rents and royalties which are derived in the active conduct of a trade or business and which are received from a person other than a related person (within the meaning of subsection (d)(3)). For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.

(B) Certain export financing

Foreign personal holding company income shall not include any interest which is derived in the conduct of a banking business and which is export financing interest (as defined in section 904(d)(2)(G)).

(C) Exception for dealers

Except as provided by regulations, in the case of a regular dealer in property which is property described in paragraph (1)(B), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities), there shall not be taken into account in computing foreign personal holding company income—

(i) any item of income, gain, deduction, or loss (other than any item described in subparagraph (A), (E), or (G) of paragraph (1)) from any transaction (including hedging transactions and transactions involving physical settlement) entered into in the ordinary course of such dealer's trade or business as such a dealer, and

(ii) if such dealer is a dealer in securities (within the meaning of section 475), any interest or dividend or equivalent amount described in subparagraph (E) or (G) of paragraph (1) from any transaction (including any hedging transaction or transaction described in section 956(c)(2)(I)) entered into in the ordinary course of such dealer's trade or business as such a dealer in securities, but only if the income from the transaction is attributable to activities of the dealer in the country under the

laws of which the dealer is created or organized (or in the case of a qualified business unit described in section 989(a), is attributable to activities of the unit in the country in which the unit both maintains its principal office and conducts substantial business activity).

(3) Certain income received from related persons

(A) In general

Except as provided in subparagraph (B), the term "foreign personal holding company income" does not include—

(i) dividends and interest received from a related person which (I) is a corporation created or organized under the laws of the same foreign country under the laws of which the controlled foreign corporation is created or organized, and (II) has a substantial part of its assets used in its trade or business located in such same foreign country, and

(ii) rents and royalties received from a corporation which is a related person for the use of, or the privilege of using, property within the country under the laws of which the controlled foreign corporation is created or organized.

To the extent provided in regulations, payments made by a partnership with 1 or more corporate partners shall be treated as made by such corporate partners in proportion to their respective interests in the partnership.

(B) Exception not to apply to items which reduce subpart F income

Subparagraph (A) shall not apply in the case of any interest, rent, or royalty to the extent such interest, rent, or royalty reduces the payor's subpart F income or creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation.

(C) Exception for certain dividends

Subparagraph (A)(i) shall not apply to any dividend with respect to any stock which is attributable to earnings and profits of the distributing corporation accumulated during any period during which the person receiving such dividend did not hold such stock either directly, or indirectly through a chain of one or more subsidiaries each of which meets the requirements of subparagraph (A)(i).

(4) Look-thru rule for certain partnership sales

(A) In general

In the case of any sale by a controlled foreign corporation of an interest in a partnership with respect to which such corporation is a 25-percent owner, such corporation shall be treated for purposes of this subsection as selling the proportionate share of the assets of the partnership attributable to such interest. The Secretary shall prescribe such regulations as may be appropriate to prevent abuse of the purposes of this paragraph, including regulations providing for coordina-

tion of this paragraph with the provisions of subchapter K.

(B) 25-percent owner

For purposes of this paragraph, the term “25-percent owner” means a controlled foreign corporation which owns directly 25 percent or more of the capital or profits interest in a partnership. For purposes of the preceding sentence, if a controlled foreign corporation is a shareholder or partner of a corporation or partnership, the controlled foreign corporation shall be treated as owning directly its proportionate share of any such capital or profits interest held directly or indirectly by such corporation or partnership. If a controlled foreign corporation is treated as owning a capital or profits interest in a partnership under constructive ownership rules similar to the rules of section 958(b), the controlled foreign corporation shall be treated as owning such interest directly for purposes of this subparagraph.

(5) Definition and special rules relating to commodity transactions

(A) Commodity hedging transactions

For purposes of paragraph (1)(C)(i), the term “commodity hedging transaction” means any transaction with respect to a commodity if such transaction—

(i) is a hedging transaction as defined in section 1221(b)(2), determined—

(I) without regard to subparagraph (A)(ii) thereof,

(II) by applying subparagraph (A)(i) thereof by substituting “ordinary property or property described in section 1231(b)” for “ordinary property”, and

(III) by substituting “controlled foreign corporation” for “taxpayer” each place it appears, and

(ii) is clearly identified as such in accordance with section 1221(a)(7).

(B) Treatment of dealer activities under paragraph (1)(C)

Commodities with respect to which gains and losses are not taken into account under paragraph (2)(C) in computing a controlled foreign corporation’s foreign personal holding company income shall not be taken into account in applying the substantially all test under paragraph (1)(C)(ii) to such corporation.

(C) Regulations

The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of paragraph (1)(C) in the case of transactions involving related parties.

(6) Look-thru rule for related controlled foreign corporations

(A) In general

For purposes of this subsection, dividends, interest, rents, and royalties received or accrued from a controlled foreign corporation which is a related person shall not be treated as foreign personal holding company income to the extent attributable or properly allocable (determined under rules similar to the

rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which is neither subpart F income nor income treated as effectively connected with the conduct of a trade or business in the United States. For purposes of this subparagraph, interest shall include factoring income which is treated as income equivalent to interest for purposes of paragraph (1)(E). The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including such regulations as may be necessary or appropriate to prevent the abuse of the purposes of this paragraph.

(B) Exception

Subparagraph (A) shall not apply in the case of any interest, rent, or royalty to the extent such interest, rent, or royalty creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation.

(C) Application

Subparagraph (A) shall apply to taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2020, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

(d) Foreign base company sales income

(1) In general

For purposes of subsection (a)(2), the term “foreign base company sales income” means income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with the purchase of personal property from a related person and its sale to any person, the sale of personal property to any person on behalf of a related person, the purchase of personal property from any person and its sale to a related person, or the purchase of personal property from any person on behalf of a related person where—

(A) the property which is purchased (or in the case of property sold on behalf of a related person, the property which is sold) is manufactured, produced, grown, or extracted outside the country under the laws of which the controlled foreign corporation is created or organized, and

(B) the property is sold for use, consumption, or disposition outside such foreign country, or, in the case of property purchased on behalf of a related person, is purchased for use, consumption, or disposition outside such foreign country.

For purposes of this subsection, personal property does not include agricultural commodities which are not grown in the United States in commercially marketable quantities.

(2) Certain branch income

For purposes of determining foreign base company sales income in situations in which the carrying on of activities by a controlled foreign corporation through a branch or similar establishment outside the country of incorporation of the controlled foreign corpora-

tion has substantially the same effect as if such branch or similar establishment were a wholly owned subsidiary corporation deriving such income, under regulations prescribed by the Secretary the income attributable to the carrying on of such activities of such branch or similar establishment shall be treated as income derived by a wholly owned subsidiary of the controlled foreign corporation and shall constitute foreign base company sales income of the controlled foreign corporation.

(3) Related person defined

For purposes of this section, a person is a related person with respect to a controlled foreign corporation, if—

(A) such person is an individual, corporation, partnership, trust, or estate which controls, or is controlled by, the controlled foreign corporation, or

(B) such person is a corporation, partnership, trust, or estate which is controlled by the same person or persons which control the controlled foreign corporation.

For purposes of the preceding sentence, control means, with respect to a corporation, the ownership, directly or indirectly, of stock possessing more than 50 percent of the total voting power of all classes of stock entitled to vote or of the total value of stock of such corporation. In the case of a partnership, trust, or estate, control means the ownership, directly or indirectly, of more than 50 percent (by value) of the beneficial interests in such partnership, trust, or estate. For purposes of this paragraph, rules similar to the rules of section 958 shall apply.

(4) Special rule for certain timber products

For purposes of subsection (a)(2), the term “foreign base company sales income” includes any income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with—

(A) the sale of any unprocessed timber referred to in section 865(b), or

(B) the milling of any such timber outside the United States.

Subpart G shall not apply to any amount treated as subpart F income by reason of this paragraph.

(e) Foreign base company services income

(1) In general

For purposes of subsection (a)(3), the term “foreign base company services income” means income (whether in the form of compensation, commissions, fees, or otherwise) derived in connection with the performance of technical, managerial, engineering, architectural, scientific, skilled, industrial, commercial, or like services which—

(A) are performed for or on behalf of any related person (within the meaning of subsection (d)(3)), and

(B) are performed outside the country under the laws of which the controlled foreign corporation is created or organized.

(2) Exception

Paragraph (1) shall not apply to income derived in connection with the performance of services which are directly related to—

(A) the sale or exchange by the controlled foreign corporation of property manufactured, produced, grown, or extracted by it and which are performed before the time of the sale or exchange, or

(B) an offer or effort to sell or exchange such property.

Paragraph (1) shall also not apply to income which is exempt insurance income (as defined in section 953(e)) or which is not treated as foreign personal holding income by reason of subsection (c)(2)(C)(ii), (h), or (i).

[(f) Repealed. Pub. L. 108-357, title IV, § 415(a)(2), Oct. 22, 2004, 118 Stat. 1511]

(g) Foreign base company oil related income

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term “foreign base company oil related income” means foreign oil related income (within the meaning of paragraphs (2) and (3) of section 907(c)) other than income derived from a source within a foreign country in connection with—

(A) oil or gas which was extracted from an oil or gas well located in such foreign country, or

(B) oil, gas, or a primary product of oil or gas which is sold by the foreign corporation or a related person for use or consumption within such country or is loaded in such country on a vessel or aircraft as fuel for such vessel or aircraft.

Such term shall not include any foreign personal holding company income (as defined in subsection (c)).

(2) Paragraph (1) applies only where corporation has produced 1,000 barrels per day or more

(A) In general

The term “foreign base company oil related income” shall not include any income of a foreign corporation if such corporation is not a large oil producer for the taxable year.

(B) Large oil producer

For purposes of subparagraph (A), the term “large oil producer” means any corporation if, for the taxable year or for the preceding taxable year, the average daily production of foreign crude oil and natural gas of the related group which includes such corporation equaled or exceeded 1,000 barrels.

(C) Related group

The term “related group” means a group consisting of the foreign corporation and any other person who is a related person with respect to such corporation.

(D) Average daily production of foreign crude oil and natural gas

For purposes of this paragraph, the average daily production of foreign crude oil or natural gas of any related group for any taxable year (and the conversion of cubic feet of natural gas into barrels) shall be determined under rules similar to the rules of section

613A except that only crude oil or natural gas from a well located outside the United States shall be taken into account.

(h) Special rule for income derived in the active conduct of banking, financing, or similar businesses

(1) In general

For purposes of subsection (c)(1), foreign personal holding company income shall not include qualified banking or financing income of an eligible controlled foreign corporation.

(2) Eligible controlled foreign corporation

For purposes of this subsection—

(A) In general

The term “eligible controlled foreign corporation” means a controlled foreign corporation which—

(i) is predominantly engaged in the active conduct of a banking, financing, or similar business, and

(ii) conducts substantial activity with respect to such business.

(B) Predominantly engaged

A controlled foreign corporation shall be treated as predominantly engaged in the active conduct of a banking, financing, or similar business if—

(i) more than 70 percent of the gross income of the controlled foreign corporation is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons,

(ii) it is engaged in the active conduct of a banking business and is an institution licensed to do business as a bank in the United States (or is any other corporation not so licensed which is specified by the Secretary in regulations), or

(iii) it is engaged in the active conduct of a securities business and is registered as a securities broker or dealer under section 15(a) of the Securities Exchange Act of 1934 or is registered as a Government securities broker or dealer under section 15C(a) of such Act (or is any other corporation not so registered which is specified by the Secretary in regulations).

(3) Qualified banking or financing income

For purposes of this subsection—

(A) In general

The term “qualified banking or financing income” means income of an eligible controlled foreign corporation which—

(i) is derived in the active conduct of a banking, financing, or similar business by—

(I) such eligible controlled foreign corporation, or

(II) a qualified business unit of such eligible controlled foreign corporation,

(ii) is derived from one or more transactions—

(I) with customers located in a country other than the United States, and

(II) substantially all of the activities in connection with which are conducted

directly by the corporation or unit in its home country, and

(iii) is treated as earned by such corporation or unit in its home country for purposes of such country’s tax laws.

(B) Limitation on nonbanking and nonsecurities businesses

No income of an eligible controlled foreign corporation not described in clause (ii) or (iii) of paragraph (2)(B) (or of a qualified business unit of such corporation) shall be treated as qualified banking or financing income unless more than 30 percent of such corporation’s or unit’s gross income is derived directly from the active and regular conduct of a lending or finance business from transactions with customers which are not related persons and which are located within such corporation’s or unit’s home country.

(C) Substantial activity requirement for cross border income

The term “qualified banking or financing income” shall not include income derived from 1 or more transactions with customers located in a country other than the home country of the eligible controlled foreign corporation or a qualified business unit of such corporation unless such corporation or unit conducts substantial activity with respect to a banking, financing, or similar business in its home country.

(D) Determinations made separately

For purposes of this paragraph, the qualified banking or financing income of an eligible controlled foreign corporation and each qualified business unit of such corporation shall be determined separately for such corporation and each such unit by taking into account—

(i) in the case of the eligible controlled foreign corporation, only items of income, deduction, gain, or loss and activities of such corporation not properly allocable or attributable to any qualified business unit of such corporation, and

(ii) in the case of a qualified business unit, only items of income, deduction, gain, or loss and activities properly allocable or attributable to such unit.

(E) Direct conduct of activities

For purposes of subparagraph (A)(ii)(II), an activity shall be treated as conducted directly by an eligible controlled foreign corporation or qualified business unit in its home country if the activity is performed by employees of a related person and—

(i) the related person is an eligible controlled foreign corporation the home country of which is the same as the home country of the corporation or unit to which subparagraph (A)(ii)(II) is being applied,

(ii) the activity is performed in the home country of the related person, and

(iii) the related person is compensated on an arm’s-length basis for the performance of the activity by its employees and such compensation is treated as earned by

such person in its home country for purposes of the home country's tax laws.

(4) Lending or finance business

For purposes of this subsection, the term "lending or finance business" means the business of—

- (A) making loans,
- (B) purchasing or discounting accounts receivable, notes, or installment obligations,
- (C) engaging in leasing (including entering into leases and purchasing, servicing, and disposing of leases and leased assets),
- (D) issuing letters of credit or providing guarantees,
- (E) providing charge and credit card services, or
- (F) rendering services or making facilities available in connection with activities described in subparagraphs (A) through (E) carried on by—
 - (i) the corporation (or qualified business unit) rendering services or making facilities available, or
 - (ii) another corporation (or qualified business unit of a corporation) which is a member of the same affiliated group (as defined in section 1504, but determined without regard to section 1504(b)(3)).

(5) Other definitions

For purposes of this subsection—

(A) Customer

The term "customer" means, with respect to any controlled foreign corporation or qualified business unit, any person which has a customer relationship with such corporation or unit and which is acting in its capacity as such.

(B) Home country

Except as provided in regulations—

(i) Controlled foreign corporation

The term "home country" means, with respect to any controlled foreign corporation, the country under the laws of which the corporation was created or organized.

(ii) Qualified business unit

The term "home country" means, with respect to any qualified business unit, the country in which such unit maintains its principal office.

(C) Located

The determination of where a customer is located shall be made under rules prescribed by the Secretary.

(D) Qualified business unit

The term "qualified business unit" has the meaning given such term by section 989(a).

(E) Related person

The term "related person" has the meaning given such term by subsection (d)(3).

(6) Coordination with exception for dealers

Paragraph (1) shall not apply to income described in subsection (c)(2)(C)(ii) of a dealer in securities (within the meaning of section 475) which is an eligible controlled foreign corporation described in paragraph (2)(B)(iii).

(7) Anti-abuse rules

For purposes of applying this subsection and subsection (c)(2)(C)(ii)—

(A) there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions one of the principal purposes of which is qualifying income or gain for the exclusion under this section, including any transaction or series of transactions a principal purpose of which is the acceleration or deferral of any item in order to claim the benefits of such exclusion through the application of this subsection,

(B) there shall be disregarded any item of income, gain, loss, or deduction of an entity which is not engaged in regular and continuous transactions with customers which are not related persons,

(C) there shall be disregarded any item of income, gain, loss, or deduction with respect to any transaction or series of transactions utilizing, or doing business with—

(i) one or more entities in order to satisfy any home country requirement under this subsection, or

(ii) a special purpose entity or arrangement, including a securitization, financing, or similar entity or arrangement,

if one of the principal purposes of such transaction or series of transactions is qualifying income or gain for the exclusion under this subsection, and

(D) a related person, an officer, a director, or an employee with respect to any controlled foreign corporation (or qualified business unit) which would otherwise be treated as a customer of such corporation or unit with respect to any transaction shall not be so treated if a principal purpose of such transaction is to satisfy any requirement of this subsection.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, subsection (c)(1)(B)(i), subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2).

(i) Special rule for income derived in the active conduct of insurance business

(1) In general

For purposes of subsection (c)(1), foreign personal holding company income shall not include qualified insurance income of a qualifying insurance company.

(2) Qualified insurance income

The term "qualified insurance income" means income of a qualifying insurance company which is—

(A) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from the investments made by a qualifying insurance company or a qualifying insurance company branch of its reserves allocable to exempt contracts or of 80 percent of its unearned premiums from exempt contracts (as both are determined in the manner prescribed under paragraph (4)), or

(B) received from a person other than a related person (within the meaning of subsection (d)(3)) and derived from investments made by a qualifying insurance company or a qualifying insurance company branch of an amount of its assets allocable to exempt contracts equal to—

(i) in the case of property, casualty, or health insurance contracts, one-third of its premiums earned on such insurance contracts during the taxable year (as defined in section 832(b)(4)), and

(ii) in the case of life insurance or annuity contracts, 10 percent of the reserves described in subparagraph (A) for such contracts.

(3) Principles for determining insurance income

Except as provided by the Secretary, for purposes of subparagraphs (A) and (B) of paragraph (2)—

(A) in the case of any contract which is a separate account-type contract (including any variable contract not meeting the requirements of section 817), income credited under such contract shall be allocable only to such contract, and

(B) income not allocable under subparagraph (A) shall be allocated ratably among contracts not described in subparagraph (A).

(4) Methods for determining unearned premiums and reserves

For purposes of paragraph (2)(A)—

(A) Property and casualty contracts

The unearned premiums and reserves of a qualifying insurance company or a qualifying insurance company branch with respect to property, casualty, or health insurance contracts shall be determined using the same methods and interest rates which would be used if such company or branch were subject to tax under subchapter L, except that—

(i) the interest rate determined for the functional currency of the company or branch, and which, except as provided by the Secretary, is calculated in the same manner as the Federal mid-term rate under section 1274(d), shall be substituted for the applicable Federal interest rate, and

(ii) such company or branch shall use the appropriate foreign loss payment pattern.

(B) Life insurance and annuity contracts

(i) In general

Except as provided in clause (ii), the amount of the reserve of a qualifying insurance company or qualifying insurance company branch for any life insurance or annuity contract shall be equal to the greater of—

(I) the net surrender value of such contract (as defined in section 807(e)(1)(A)), or

(II) the reserve determined under paragraph (5).

(ii) Ruling request, etc.

The amount of the reserve under clause (i) shall be the foreign statement reserve

for the contract (less any catastrophe, deficiency, equalization, or similar reserves), if, pursuant to a ruling request submitted by the taxpayer or as provided in published guidance, the Secretary determines that the factors taken into account in determining the foreign statement reserve provide an appropriate means of measuring income.

(C) Limitation on reserves

In no event shall the reserve determined under this paragraph for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining foreign statement reserves (less any catastrophe, deficiency, equalization, or similar reserves).

(5) Amount of reserve

The amount of the reserve determined under this paragraph with respect to any contract shall be determined in the same manner as it would be determined if the qualifying insurance company or qualifying insurance company branch were subject to tax under subchapter L, except that in applying such subchapter—

(A) the interest rate determined for the functional currency of the company or branch, and which, except as provided by the Secretary, is calculated in the same manner as the Federal mid-term rate under section 1274(d), shall be substituted for the applicable Federal interest rate,

(B) the highest assumed interest rate permitted to be used in determining foreign statement reserves shall be substituted for the prevailing State assumed interest rate, and

(C) tables for mortality and morbidity which reasonably reflect the current mortality and morbidity risks in the company's or branch's home country shall be substituted for the mortality and morbidity tables otherwise used for such subchapter.

The Secretary may provide that the interest rate and mortality and morbidity tables of a qualifying insurance company may be used for 1 or more of its qualifying insurance company branches when appropriate.

(6) Definitions

For purposes of this subsection, any term used in this subsection which is also used in section 953(e) shall have the meaning given such term by section 953.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1009; amended Pub. L. 91-172, title IX, §909(a), Dec. 30, 1969, 83 Stat. 718; Pub. L. 94-12, title VI, §602(b), (c)(1), (2), (d)(1), (e), Mar. 29, 1975, 89 Stat. 58, 60, 64; Pub. L. 94-455, title X, §§1023(a), 1024(a), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1620, 1834; Pub. L. 97-248, title II, §212(a)-(e), Sept. 3, 1982, 96 Stat. 451, 452; Pub. L. 98-369, div. A, title I, §137(a), title VII, §712(f), July 18, 1984, 98 Stat. 672, 947; Pub. L. 99-514, title XII, §§1201(c), 1221(a)(1), (b)(3)(B), (c)(1)-(3)(A), (d), (e), 1223(a), title XVIII, §1810(k), Oct. 22, 1986, 100 Stat. 2525, 2549, 2553, 2557, 2830; Pub. L. 100-647, title I, §§1012(i)(12), (14)(A), (18),

(20), (25)(B), 1018(u)(38), Nov. 10, 1988, 102 Stat. 3509-3512, 3592; Pub. L. 101-239, title VII, § 7811(i)(3), Dec. 19, 1989, 103 Stat. 2409; Pub. L. 103-66, title XIII, §§ 13233(a)(1), 13235(a)(3), (b), 13239(d), Aug. 10, 1993, 107 Stat. 502, 504, 505, 509; Pub. L. 104-188, title I, § 1704(t)(25), Aug. 20, 1996, 110 Stat. 1888; Pub. L. 105-34, title X, § 1051(a), (b), title XI, § 1175(a), (b), Aug. 5, 1997, 111 Stat. 940, 990, 993; Pub. L. 105-277, div. J, title I, § 1005(a), (b)(2), (c)-(e), title IV, § 4003(j), Oct. 21, 1998, 112 Stat. 2681-890, 2681-897, 2681-899, 2681-900, 2681-910; Pub. L. 106-170, title V, §§ 503(a), 532(c)(2)(Q), Dec. 17, 1999, 113 Stat. 1921, 1931; Pub. L. 107-147, title IV, § 417(24)(B)(ii), title VI, § 614(a)(2), (b)(1), Mar. 9, 2002, 116 Stat. 57, 61; Pub. L. 108-357, title IV, §§ 412(a), 413(b)(2), 414(a)-(c), 415(a), (b), (c)(2), 416(a), Oct. 22, 2004, 118 Stat. 1505, 1506, 1510, 1511; Pub. L. 109-135, title IV, §§ 403(m), 412(l), (mm), Dec. 21, 2005, 119 Stat. 2626, 2639; Pub. L. 109-222, title I, § 103(a)(2), (b)(1), May 17, 2006, 120 Stat. 346; Pub. L. 109-432, div. A, title IV, § 426(a)(1), Dec. 20, 2006, 120 Stat. 2974; Pub. L. 110-172, §§ 4(a), 11(a)(19), (20), (g)(15)(B), Dec. 29, 2007, 121 Stat. 2475, 2486, 2491; Pub. L. 110-343, div. C, title III, §§ 303(b), 304(a), Oct. 3, 2008, 122 Stat. 3866, 3867; Pub. L. 111-312, title VII, §§ 750(a), 751(a), Dec. 17, 2010, 124 Stat. 3320, 3321; Pub. L. 112-240, title III, §§ 322(b), 323(a), Jan. 2, 2013, 126 Stat. 2332, 2333; Pub. L. 113-295, div. A, title I, §§ 134(b), 135(a), Dec. 19, 2014, 128 Stat. 4019; Pub. L. 114-113, div. Q, title I, §§ 128(b), 144(a), Dec. 18, 2015, 129 Stat. 3054, 3065.)

REFERENCES IN TEXT

Sections 15(a) and 15C(a) of the Securities Exchange Act of 1934, referred to in subsec. (h)(2)(B)(iii), are classified to sections 780(a) and 780-5(a), respectively, of Title 15, Commerce and Trade.

AMENDMENTS

2015—Subsec. (c)(6)(C). Pub. L. 114-113, § 144(a), substituted “January 1, 2020” for “January 1, 2015”.

Subsec. (h)(9). Pub. L. 114-113, § 128(b), struck out par. (9). Text read as follows: “This subsection, subsection (c)(2)(C)(ii), and the last sentence of subsection (e)(2) shall apply only to taxable years of a foreign corporation beginning after December 31, 1998, and before January 1, 2015, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.”

2014—Subsec. (c)(6)(C). Pub. L. 113-295, § 135(a), substituted “January 1, 2015” for “January 1, 2014”.

Subsec. (h)(9). Pub. L. 113-295, § 134(b), substituted “January 1, 2015” for “January 1, 2014”.

2013—Subsec. (c)(6)(C). Pub. L. 112-240, § 323(a), substituted “January 1, 2014” for “January 1, 2012”.

Subsec. (h)(9). Pub. L. 112-240, § 322(b), substituted “January 1, 2014” for “January 1, 2012”.

2010—Subsec. (c)(6)(C). Pub. L. 111-312, § 751(a), substituted “January 1, 2012” for “January 1, 2010”.

Subsec. (h)(9). Pub. L. 111-312, § 750(a), substituted “January 1, 2012” for “January 1, 2010”.

2008—Subsec. (c)(6)(C). Pub. L. 110-343, § 304(a), substituted “January 1, 2010” for “January 1, 2009”.

Subsec. (h)(9). Pub. L. 110-343, § 303(b), substituted “January 1, 2010” for “January 1, 2009”.

2007—Subsec. (c)(1)(F). Pub. L. 110-172, § 11(a)(19), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Any item of income, gain, deduction, or loss from a notional principal contract entered into for purposes of hedging any item described in any preceding subparagraph shall not be taken into account for purposes of this subparagraph but shall be taken into account under such other subparagraph.”

Subsec. (c)(1)(H), (I). Pub. L. 110-172, § 11(a)(20), redesignated subpar. (I) as (H).

Subsec. (c)(2)(C)(ii). Pub. L. 110-172, § 11(g)(15)(B), substituted “section 956(c)(2)(I)” for “section 956(c)(2)(J)”.

Subsec. (c)(6)(B), (C). Pub. L. 110-172, § 4(a), added subpar. (B) and redesignated former subpar. (B) as (C).

2006—Subsec. (c)(6). Pub. L. 109-222, § 103(b)(1), added par. (6).

Subsec. (c)(6)(A). Pub. L. 109-432, in first sentence, substituted “which is neither subpart F income nor income treated as effectively connected with the conduct of a trade or business in the United States” for “which is not subpart F income” and, in last sentence, substituted “The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph, including such regulations as may be necessary or appropriate to prevent the abuse of the purposes of this paragraph” for “The Secretary shall prescribe such regulations as may be appropriate to prevent the abuse of the purposes of this paragraph”.

Subsec. (h)(9). Pub. L. 109-222, § 103(a)(2), substituted “January 1, 2009” for “January 1, 2007”.

2005—Subsec. (c)(1)(C)(i). Pub. L. 109-135, § 412(l), substituted “paragraph (5)(A)” for “paragraph (4)(A)”.

Subsec. (c)(1)(F). Pub. L. 109-135, § 412(mm), struck out “Net income from notional principal contracts.” before “Any item of income”.

Subsec. (c)(4)(B). Pub. L. 109-135, § 403(m), inserted at end “If a controlled foreign corporation is treated as owning a capital or profits interest in a partnership under constructive ownership rules similar to the rules of section 958(b), the controlled foreign corporation shall be treated as owning such interest directly for purposes of this subparagraph.”

2004—Subsec. (a)(4). Pub. L. 108-357, § 415(a)(1), struck out par. (4) which read as follows: “the foreign base company shipping income for the taxable year (determined under subsection (f) and reduced as provided in subsection (b)(5)), and”.

Subsec. (b)(5). Pub. L. 108-357, § 415(c)(2)(A), struck out “the foreign base company shipping income,” after “the foreign base company services income,”.

Subsec. (b)(6) to (8). Pub. L. 108-357, § 415(c)(2)(B), (C), redesignated par. (8) as (6) and struck out former pars. (6) and (7) which set forth special rules and special exclusion for foreign base company shipping income.

Subsec. (c)(1)(C)(i), (ii). Pub. L. 108-357, § 414(a), amended cls. (i) and (ii) generally. Prior to amendment, cls. (i) and (ii) read as follows:

“(i) arise out of bona fide hedging transactions reasonably necessary to the conduct of any business by a producer, processor, merchant, or handler of a commodity in the manner in which such business is customarily and usually conducted by others,

“(ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation’s business is as an active producer, processor, merchant, or handler of commodities, or”.

Subsec. (c)(1)(I). Pub. L. 108-357, § 413(b)(2), added subpar. (I).

Subsec. (c)(2)(A). Pub. L. 108-357, § 415(b), inserted at end “For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.”

Subsec. (c)(2)(C)(i). Pub. L. 108-357, § 414(c), inserted “and transactions involving physical settlement” after “(including hedging transactions)”.

Subsec. (c)(4). Pub. L. 108-357, § 412(a), added par. (4).

Subsec. (c)(5). Pub. L. 108-357, § 414(b), added par. (5).

Subsec. (f). Pub. L. 108-357, § 415(a)(2), struck out subsec. (f) which defined “foreign base company shipping income” for purposes of subsec. (a)(4).

Subsec. (h)(3)(E). Pub. L. 108-357, § 416(a), added subpar. (E).

2002—Subsec. (c)(1)(B). Pub. L. 107-147, § 417(24)(B)(ii), which directed the amendment of Pub. L. 106-170,

§532(c)(2)(Q), was executed to that section as if the amendment were retroactive to the effective date of the amendment by Pub. L. 106-170 to reflect the probable intent of Congress. See 1999 Amendment note below.

Subsec. (h)(9). Pub. L. 107-147, §614(a)(2), substituted “January 1, 2007” for “January 1, 2002”.

Subsec. (i)(4)(B). Pub. L. 107-147, §614(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The amount of the reserve of a qualifying insurance company or qualifying insurance company branch for any life insurance or annuity contract shall be equal to the greater of—

“(i) the net surrender value of such contract (as defined in section 807(e)(1)(A)), or

“(ii) the reserve determined under paragraph (5).”

1999—Subsec. (c)(1)(B). Pub. L. 106-170, §532(c)(2)(Q), as amended by Pub. L. 107-147, §417(24)(B)(ii), substituted “section 1221(a)(1)” for “section 1221(1)” in concluding provisions.

Subsec. (h)(9). Pub. L. 106-170, §503(a), substituted “taxable years” for “the first taxable year”, “January 1, 2002” for “January 1, 2000”, and “within which any such” for “within which such”.

1998—Subsec. (c)(1)(B)(i). Pub. L. 105-277, §1005(e), inserted “other than property which gives rise to income not treated as foreign personal holding company income by reason of subsection (h) or (i) for the taxable year” before comma at end.

Subsec. (c)(2)(C). Pub. L. 105-277, §1005(c), amended heading and text of subpar. (C), generally. Prior to amendment, text read as follows: “Except as provided in subparagraph (A), (E), or (G) of paragraph (1) or by regulations, in the case of a regular dealer in property (within the meaning of paragraph (1)(B)), forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities), there shall not be taken into account in computing foreign personal holding income any item of income, gain, deduction, or loss from any transaction (including hedging transactions) entered into in the ordinary course of such dealer’s trade or business as such a dealer.”

Subsec. (e)(2). Pub. L. 105-277, §1005(d), inserted “or” at end of subpar. (A), substituted a period for “, or” at end of subpar. (B), and inserted concluding provisions.

Subsec. (e)(2)(C). Pub. L. 105-277, §4003(j), substituted “(h)(9)” for “(h)(8)”.

Pub. L. 105-277, §1005(d), struck out subpar. (C) which read as follows: “in the case of taxable years described in subsection (h)(9), the active conduct by a controlled foreign corporation of a banking, financing, insurance, or similar business, but only if the corporation is predominantly engaged in the active conduct of such business (within the meaning of subsection (h)(3)) or is a qualifying insurance company.”

Subsec. (h). Pub. L. 105-277, §1005(a), amended heading and text of subsec. (h) generally. Prior to amendment, text consisted of pars. (1) to (9) relating to special rule for income derived in active conduct of banking, financing, or similar businesses, principles for determining applicable income, meaning of “predominantly engaged” for purposes of the special rule, methods of determining unearned premiums and reserves, definitions of certain terms for purposes of subsec. (h), anti-abuse rules, coordination with section 953 of this title, and taxable year applicability of subsec. (h).

Subsec. (i). Pub. L. 105-277, §1005(b)(2), added subsec. (i).

1997—Subsec. (c)(1)(B). Pub. L. 105-34, §1051(a)(2), in concluding provisions, struck out “In the case of any regular dealer in property, gains and losses from the sale or exchange of any such property or arising out of bona fide hedging transactions reasonably necessary to the conduct of the business of being a dealer in such property shall not be taken into account under this subparagraph.” before “Gains and losses” and “also” after “section 1221(1)”.

Subsec. (c)(1)(F), (G). Pub. L. 105-34, §1051(a)(1), added subpars. (F) and (G).

Subsec. (c)(2)(C). Pub. L. 105-34, §1051(b), added subpar. (C).

Subsec. (e)(2)(C). Pub. L. 105-34, §1175(b), added subpar. (C).

Subsec. (h). Pub. L. 105-34, §1175(a), added subsec. (h). 1996—Subsec. (c)(3)(A)(i). Pub. L. 104-188 amended directory language of Pub. L. 101-239, §7811(i)(3)(A). See 1989 Amendment note below.

1993—Subsec. (b)(8). Pub. L. 103-66, §13235(a)(3)(B), struck out “(1),” after “such corporation under paragraph”.

Subsec. (c)(3)(C). Pub. L. 103-66, §13233(a)(1), added subpar. (C).

Subsec. (d)(4). Pub. L. 103-66, §13239(d), added par. (4).

Subsec. (f). Pub. L. 103-66, §13235(b), inserted at end of concluding provisions “Except as provided in paragraph (1), such term shall not include any dividend or interest income which is foreign personal holding company income (as defined in subsection (c)).”

Subsec. (g)(1). Pub. L. 103-66, §13235(a)(3)(A), inserted at end “Such term shall not include any foreign personal holding company income (as defined in subsection (c)).”

1989—Subsec. (c)(3)(A). Pub. L. 101-239, §7811(i)(3)(C), inserted at end “To the extent provided in regulations, payments made by a partnership with 1 or more corporate partners shall be treated as made by such corporate partners in proportion to their respective interests in the partnership.”

Subsec. (c)(3)(A)(i). Pub. L. 101-239, §7811(i)(3)(A), as amended by Pub. L. 104-188, substituted “is a corporation created” for “is created” after “person which (I)”.

Subsec. (c)(3)(A)(ii). Pub. L. 101-239, §7811(i)(3)(B), substituted “from a corporation which is a related person” for “from a related person”.

1988—Subsec. (b)(6), (7). Pub. L. 100-647, §1012(i)(12), struck out “(determined without regard to the exclusion under paragraph (2) of this subsection)” after “paragraph (4) of subsection (a)”.

Subsec. (c)(1)(B). Pub. L. 100-647, §1012(i)(18), (20), added cl. (ii), redesignated former cl. (ii) as (iii), added closing provisions, and struck out former closing provisions which read as follows: “This subparagraph shall not apply to gain from the sale or exchange of any property which, in the hands of the taxpayer, is property described in section 1221(1) or to gain from the sale or exchange of any property by a regular dealer in such property.”

Subsec. (c)(3)(B). Pub. L. 100-647, §1012(i)(25)(B), inserted before period at end “or creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation”.

Subsec. (d)(3). Pub. L. 100-647, §1012(i)(14)(A), substituted “more than 50 percent” for “50 percent or more” in last two sentences.

Subsec. (e)(3). Pub. L. 100-647, §1018(u)(38), related to execution of amendment by Pub. L. 99-514, §1221(b)(3)(B), see 1986 Amendment note below.

1986—Subsec. (a)(5). Pub. L. 99-514, §1221(c)(3)(A)(ii), substituted “determined under subsection (g)” for “determined under subsection (h)”.

Subsec. (b)(2). Pub. L. 99-514, §1221(c)(1), struck out par. (2), exclusion for reinvested shipping income, which read as follows: “For purposes of subsection (a), foreign base company income does not include foreign base company shipping income to the extent that the amount of such income does not exceed the increase for the taxable year in qualified investments in foreign base company shipping operations of the controlled foreign corporation (as determined under subsection (g)).”

Subsec. (b)(3). Pub. L. 99-514, §1223(a), amended par. (3) generally. Prior to amendment, par. (3), special rule where foreign base company income is less than 10 percent or more than 70 percent of gross income, read as follows: “For purposes of subsection (a)—

“(A) If the foreign base company income (determined without regard to paragraphs (2) and (5)) is less than 10 percent of gross income, no part of the gross income of the taxable year shall be treated as foreign base company income.

“(B) If the foreign base company income (determined without regard to paragraphs (2) and (5)) exceeds 70 percent of gross income, the entire gross income of the taxable year shall, subject to the provisions of paragraphs (2), (4), and (5), be treated as foreign base company income.”

Subsec. (b)(4). Pub. L. 99-514, §1221(d), amended par. (4) generally. Prior to amendment, par. (4), exception for foreign corporations not availed of to reduce taxes, read as follows: “For purposes of subsection (a), foreign base company income does not include any item of income received by a controlled foreign corporation if it is established to the satisfaction of the Secretary that neither—

“(A) the creation or organization of such controlled foreign corporation under the laws of the foreign country in which it is incorporated (or, in the case of a controlled foreign corporation which is an acquired corporation, the acquisition of such corporation created or organized under the laws of the foreign country in which it is incorporated), nor

“(B) the effecting of the transaction giving rise to such income through the controlled foreign corporation,

has as one of its significant purposes a substantial reduction of income, war profits, or excess profits or similar taxes. The preceding sentence shall not apply to foreign base company oil related income described in subsection (a)(5).”

Subsec. (b)(5). Pub. L. 99-514, §1201(c), inserted at end “Except to the extent provided in regulations prescribed by the Secretary, any interest which is paid or accrued by the controlled foreign corporation to any United States shareholder in such corporation (or any controlled foreign corporation related to such a shareholder) shall be allocated first to foreign personal holding company income which is passive income (within the meaning of section 904(d)(2)) of such corporation to the extent thereof. The Secretary may, by regulations, provide that the preceding sentence shall apply also to interest paid or accrued to other persons.”

Subsec. (c). Pub. L. 99-514, §1221(a)(1), amended subsec. (c) generally, substituting pars. (1) to (3) for former provisions which had provided: in par. (1), a reference to definition of “foreign personal holding company income” contained in section 553; in par. (2), that all rents would be included in “foreign personal holding company income” without regard to whether or not such rents constituted 50 percent or more of gross income; in par. (3), for exclusion of certain income derived in active conduct of a trade or business; and in par. (4), exclusion of certain income received from related persons from being included in “foreign personal holding company income”. See subsec. (c)(3).

Subsec. (d)(3). Pub. L. 99-514, §1221(e), added subpars. (A) and (B) and concluding provisions and struck out former subpars. (A) to (C) and concluding provisions which read as follows:

“(A) such person is an individual, partnership, trust, or estate which controls the controlled foreign corporation;

“(B) such person is a corporation which controls, or is controlled by, the controlled foreign corporation; or

“(C) such person is a corporation which is controlled by the same person or persons which control the controlled foreign corporation.

For purposes of the preceding sentence, control means the ownership, directly or indirectly, of stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote. For purposes of this paragraph, the rules for determining ownership of stock prescribed by section 958 shall apply.”

Subsec. (e). Pub. L. 99-514, §1810(k), in amending subsec. (e) generally, designated existing provisions as par. (1), added par. heading, and substituted subpar. (A) and (B) designations for prior par. (1) and (2) designations, struck out provisions relating to nonapplicability of preceding sentence to services performed in connection with manufactured or grown or extracted property, and

provisions determining the place of performance of services for purposes of paragraph (2) with respect to any policy of insurance and reinsurance, and added pars. (2) and (3).

Subsec. (e)(3). Pub. L. 99-514, §1221(b)(3)(B), and Pub. L. 100-647, §1018(u)(38), struck out par. (3) as enacted by section 1810(k) of Pub. L. 99-514, which read as follows: “For purposes of paragraph (1), in the case of any services performed with respect to any policy of insurance or reinsurance with respect to which the primary insured is a related person (within the meaning of section 864(d)(4))—

“(A) such primary insured shall be treated as a related person for purposes of paragraph (1)(A) (whether or not the requirements of subsection (d)(3) are met),

“(B) such services shall be treated as performed in the country within which the insured hazards, risks, losses, or liabilities occur, and

“(C) except as otherwise provided in regulations by the Secretary, rules similar to the rules of section 953(b) shall be applied in determining the income from such services.”

Subsec. (f). Pub. L. 99-514, §1221(c)(2), inserted last sentence.

Subsecs. (g), (h). Pub. L. 99-514, §1221(c)(3)(A)(i), redesignated subsec. (h) as (g) and struck out former subsec. (g), increase in qualified investments in foreign base company shipping operations, which read as follows: “For purposes of subsection (b)(2), the increase for any taxable year in qualified investments in foreign base company shipping operations of any controlled foreign corporation is the amount by which—

“(1) the qualified investments in foreign base company shipping operations (as defined in section 955(b)) of the controlled foreign corporation at the close of the taxable year, exceed

“(2) the qualified investments in foreign base company shipping operations (as so defined) of the controlled foreign corporation at the close of the preceding taxable year.”

1984—Subsec. (e). Pub. L. 98-369, §137(a), inserted provision that for purposes of par. (2) services performed with respect to any insurance or reinsurance policy be treated as performed in the country of risk.

Subsec. (h)(1). Pub. L. 98-369, §712(f), substituted “paragraphs (2) and (3) of section 907(c)” for “section 907(c)(2)”.

1982—Subsec. (a)(5). Pub. L. 97-248, §212(a), (e), added par. (5).

Subsec. (b)(4). Pub. L. 97-248, §212(d), inserted at end “The preceding sentence shall not apply to foreign base company oil related income described in subsection (a)(5).”

Subsec. (b)(5). Pub. L. 97-248, §212(b)(1), substituted “, the foreign base company shipping income, and the foreign base company oil related income” for “and the foreign base company shipping income”.

Subsec. (b)(8). Pub. L. 97-248, §212(b)(2), added par. (8).

Subsec. (h). Pub. L. 97-248, §212(c), added subsec. (h). 1976—Subsecs. (b)(4), (5). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (b)(7). Pub. L. 94-455, §1024(a), added par. (7).

Subsec. (c)(3)(C). Pub. L. 94-455, §1023(a), added subpar. (C).

1975—Subsec. (a)(4). Pub. L. 94-12, §602(d)(1)(A), added par. (4).

Subsec. (b)(1). Pub. L. 94-12, §602(c)(1), struck out subsec. (b)(1) which related to the exclusion of certain dividends, interest, and gains from qualified investments in less developed countries.

Subsec. (b)(2). Pub. L. 94-12, §602(d)(1)(B), substituted “foreign base company shipping income to the extent that the amount of such income does not exceed the increase for the taxable year in qualified investments in foreign base company shipping operations of the controlled foreign corporation (as determined under subsection (g))” for “income derived from, or in connection with, the use (or hiring or leasing for use) of any aircraft or vessel in foreign commerce, or the perform-

ance of services directly related to the use of any such aircraft or vessel” in text and “Exclusion for reinvested shipping income” for “Exclusion of certain shipping income” in heading.

Subsec. (b)(3). Pub. L. 94-12, §602(d)(1)(C), (D), (e), substituted “10 percent” for “30 percent” in heading, substituted “paragraphs (2) and (5)” for “paragraphs (1) and (5)” and “10 percent” for “30 percent” in subpar. (A), and substituted “paragraphs (2) and (5)” for “paragraphs (1) and (5)” and “paragraphs (2), (4), and (5)” for “paragraphs (1), (2), (4), and (5)” in subpar. (B).

Subsec. (b)(5). Pub. L. 94-12, §602(d)(1)(E), substituted “the foreign base company services income, and the foreign base company shipping income” for “and the foreign base company services income”.

Subsec. (b)(6). Pub. L. 94-12, §602(d)(1)(F), added par. (6).

Subsec. (d)(1). Pub. L. 94-12, §602(b), provided that for purposes of subsec. (d) personal property does not include agricultural commodities which are not grown in the United States in commercially marketable quantities.

Subsecs. (f), (g). Pub. L. 94-12, §602(c)(2), (d)(1)(G), added subsecs. (f) and (g).

1969—Subsec. (b)(4). Pub. L. 91-172 inserted reference to a foreign corporation which is an acquired corporation, and made the effecting of a transaction giving rise to foreign base income through the controlled foreign corporation subject to the Secretary’s power to disallow inclusion of any item of such income where such inclusion will have one of the effects prescribed by this section.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by section 128(b) of Pub. L. 114-113 applicable to taxable years of foreign corporations beginning after Dec. 31, 2014, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends, see section 128(c) of Pub. L. 114-113, set out as a note under section 953 of this title.

Pub. L. 114-113, div. Q, title I, §144(b), Dec. 18, 2015, 129 Stat. 3065, provided that: “The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2014, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section 134(b) of Pub. L. 113-295 applicable to taxable years of foreign corporations beginning after Dec. 31, 2013, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends, see section 134(c) of Pub. L. 113-295, set out as a note under section 953 of this title.

Pub. L. 113-295, div. A, title I, §135(b), Dec. 19, 2014, 128 Stat. 4019, provided that: “The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2013, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by section 322(b) of Pub. L. 112-240 applicable to taxable years of foreign corporations beginning after Dec. 31, 2011, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends, see section 322(c) of Pub. L. 112-240, set out as a note under section 953 of this title.

Pub. L. 112-240, title III, §323(b), Jan. 2, 2013, 126 Stat. 2333, provided that: “The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2011, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 750(a) of Pub. L. 111-312 applicable to taxable years of foreign corporations beginning after Dec. 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends, see section 750(c) of Pub. L. 111-312, set out as a note under section 953 of this title.

Pub. L. 111-312, title VII, §751(b), Dec. 17, 2010, 124 Stat. 3321, provided that: “The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2009, and to taxable years of United States shareholders with or within which any such taxable year of such foreign corporation ends.”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. C, title III, §304(b), Oct. 3, 2008, 122 Stat. 3867, provided that: “The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2007, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 4(a) of Pub. L. 110-172 effective as if included in the provisions of the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. 109-222, to which such amendment relates, with certain exceptions, see section 4(d) of Pub. L. 110-172, set out as a note under section 355 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title IV, §426(a)(2), Dec. 20, 2006, 120 Stat. 2974, provided that: “The amendments made by this subsection [amending this section] shall take effect as if included in section 103(b) of the Tax Increase Prevention and Reconciliation Act of 2005 [Pub. L. 109-222].”

Pub. L. 109-222, title I, §103(b)(2), May 17, 2006, 120 Stat. 347, provided that: “The amendment made by this subsection [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2005, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by section 403(m) of Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title IV, §412(b), Oct. 22, 2004, 118 Stat. 1506, provided that: “The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

Amendment by section 413(b)(2) of Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108-357, title IV, §414(d), Oct. 22, 2004, 118 Stat. 1511, provided that: “The amendments made by this section [amending this section] shall apply to transactions entered into after December 31, 2004.”

Amendment by section 415(a), (b), (c)(2) of Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years

of United States shareholders with or within which such taxable years of foreign corporations end, see section 415(d) of Pub. L. 108-357, set out as a note under section 952 of this title.

Pub. L. 108-357, title IV, § 416(b), Oct. 22, 2004, 118 Stat. 1512, provided that: "The amendment made by this section [amending this section] shall apply to taxable years of such foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of such foreign corporations end."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by section 614(a)(2), (b)(1) of Pub. L. 107-147 applicable to taxable years beginning after Dec. 31, 2001, see section 614(c) of Pub. L. 107-147, set out as a note under section 953 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 503(a) of Pub. L. 106-170 applicable to taxable years beginning after Dec. 31, 1999, see section 503(c) of Pub. L. 106-170, set out as a note under section 953 of this title.

Amendment by section 532(c)(2)(Q) of Pub. L. 106-170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106-170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 4003(j) of Pub. L. 105-277 effective as if included in the provision of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 4003(l) of Pub. L. 105-277, set out as a note under section 86 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title X, § 1051(c), Aug. 5, 1997, 111 Stat. 940, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105-34, title XI, § 1175(c), Aug. 5, 1997, 111 Stat. 993, provided that: "The amendments made by this section [amending this section] shall apply to the first full taxable year of a foreign corporation beginning after December 31, 1997, and before January 1, 1999, and to taxable years of United States shareholders with or within which such taxable year of such foreign corporation ends."

EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-66, title XIII, § 13233(a)(2), Aug. 10, 1993, 107 Stat. 502, provided that: "The amendment made by paragraph (1) [amending this section] shall apply to taxable years of controlled foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end."

Amendment by section 13235(a)(3) and (b) of Pub. L. 103-66 applicable to taxable years beginning after Dec. 31, 1992, see section 13235(c) of Pub. L. 103-66, set out as a note under section 904 of this title.

Amendment by section 13239(d) of Pub. L. 103-66 applicable to sales, exchanges, or other dispositions after Aug. 10, 1993, see section 13239(e) of Pub. L. 103-66, set out as a note under section 865 of this title.

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 OF 1986 AMENDMENT

Amendment by section 1201(c) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1201(e) of Pub. L. 99-514, set out as a note under section 904 of this title.

Pub. L. 99-514, title XII, § 1221(g), Oct. 22, 1986, 100 Stat. 2555, as amended by Pub. L. 100-647, title I, § 1012(i)(13), Nov. 10, 1988, 102 Stat. 3509, provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 864, 952, 953, 955, and 957 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1986.

"(2) SPECIAL RULE FOR REPEAL OF EXCLUSION FOR REINVESTMENT SHIPPING INCOME.—

"(A) IN GENERAL.—In the case of any qualified controlled foreign corporation—

"(i) the amendments made by subsection (c) [amending this section and section 955 of this title] shall apply to taxable years ending on or after January 1, 1992, and

"(ii) sections 955(a)(1)(A) and 955(a)(2)(A) of the Internal Revenue Code of 1986 (as amended by subsection (c)(3)) shall be applied by substituting 'ending before 1992' for 'beginning before 1987'.

"(B) QUALIFIED CONTROLLED FOREIGN CORPORATION.—For purposes of subparagraph (A), the term 'qualified controlled foreign corporation' means any controlled foreign corporation (as defined in section 957 of such Code)—

"(i) if the United States agent of such corporation is a domestic corporation incorporated on March 13, 1951, and

"(ii) if—
"(I) the certificate of incorporation of such corporation is dated November 23, 1963, and

"(II) such corporation has a wholly owned subsidiary and its certificate of incorporation is dated November 2, 1965.

"(3) EXCEPTION FOR CERTAIN REINSURANCE CONTRACTS.—

"(A) IN GENERAL.—In the case of the 1st 3 taxable years of a qualified controlled foreign insurer beginning after December 31, 1986, the amendments made by this section shall not apply to the phase-in percentage of any qualified reinsurance income.

"(B) PHASE-IN PERCENTAGE.—For purposes of subparagraph (A):

"In the case of taxable years beginning in:	The phase-in percentage is:
1987	75
1988	50
1989	25.

"(C) QUALIFIED CONTROLLED FOREIGN INSURER.—For purposes of this paragraph, the term 'qualified controlled foreign insurer' means—

"(i) any controlled foreign corporation which on August 16, 1986, was a member of an affiliated group (as defined in section 1504(a) of the Internal Revenue Code of 1986 without regard to subsection (b)(3) thereof) which had as its common parent a corporation incorporated in Delaware on June 9, 1967, with executive offices in New York, New York, or

"(ii) any controlled foreign corporation which on August 16, 1986, was a member of an affiliated group (as so defined) which had as its common parent a corporation incorporated in Delaware on November 3, 1981, with executive offices in Philadelphia, Pennsylvania.

"(D) QUALIFIED REINSURANCE INCOME.—For purposes of this paragraph, the term 'qualified reinsurance income' means any insurance income attributable to risks (other than risks described in section 953(a) or

954(e) of such Code as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) assumed under a reinsurance contract. For purposes of this subparagraph, insurance income shall mean the underwriting income (as defined in section 832(b)(3) of such Code) and investment income derived from an amount of assets (to be segregated and separately identified) equivalent to the ordinary and necessary insurance reserves and necessary surplus equal to 1/3 of earned premium attributable to such contracts. For purposes of this paragraph, the amount of qualified reinsurance income shall not exceed the amount of insurance income from reinsurance contracts for calendar year 1985. In the case of controlled foreign corporations described in subparagraph (C)(ii), the preceding sentence shall not apply and the qualified reinsurance income of any such corporation shall not exceed such corporation's proportionate share of \$27,000,000 (determined on the basis of respective amounts of qualified reinsurance income determined without regard to this subparagraph)."

Amendment by section 1223(a) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1223(c) of Pub. L. 99-514, set out as a note under section 864 of this title.

Amendment by section 1810(k) 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

Pub. L. 98-369, div. A, title I, §137(b), July 18, 1984, 98 Stat. 672, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years of controlled foreign corporations beginning after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 712(f) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Pub. L. 97-248, title II, §212(f), Sept. 3, 1982, 96 Stat. 452, provided that: "The amendments made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1982, and to taxable years of United States shareholders in which, or with which, such taxable years of foreign corporations end."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title X, §1023(b), Oct. 4, 1976, 90 Stat. 1620, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end."

Pub. L. 94-455, title X, §1024(b), Oct. 4, 1976, 90 Stat. 1620, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "The amendment made by this section [amending this section] shall apply to taxable years of foreign corporations beginning after December 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) within which or with which such taxable years of such foreign corporations end."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-12 applicable to taxable years of 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.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-172, title IX, §909(b), Dec. 30, 1969, 83 Stat. 718, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after October 9, 1969."

LINE ITEM VETO

Pub. L. 105-34, title XI, §1175, Aug. 5, 1997, 111 Stat. 990, amending this section and enacting provisions set out as a note above, was subject to line item veto by the President, Cancellation No. 97-1, signed Aug. 11, 1997, 62 F.R. 43266, Aug. 12, 1997. For decision holding line item veto unconstitutional, see *Clinton v. City of New York*, 524 U.S. 417, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998).

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

For applicability of amendment by section 1201(c) of Pub. L. 99-514 notwithstanding 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)(2), (4) of Pub. L. 100-647, set out as a note under section 861 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.

SPECIAL RULE FOR APPLICATION OF SECTION 954 TO CERTAIN DIVIDENDS

Pub. L. 99-514, title XII, §1227, Oct. 22, 1986, 100 Stat. 2560, provided that:

"(a) IN GENERAL.—For purposes of section 954(c)(3)(A) of the Internal Revenue Code of 1986, any dividends received by a qualified controlled foreign corporation (within the meaning of section 951 of such Code) during any of its 1st 5 taxable years beginning after December 31, 1986, with respect to its 32.7 percent interest in a Brazilian corporation shall be treated as if such Brazilian corporation were a related person to the qualified controlled foreign corporation to the extent the Brazilian corporation's income is attributable to its interest in the trade or business of mining in Brazil.

"(b) QUALIFIED CONTROLLED FOREIGN CORPORATION.—For purposes of this section, a qualified controlled foreign corporation is a corporation the greater than 99 percent shareholder of which is a company originally incorporated in Montana on July 9, 1951 (the name of which was changed on August 10, 1966).

"(c) EFFECTIVE DATE.—The amendment made by this section shall apply to dividends received after December 31, 1986."

§ 955. Withdrawal of previously excluded subpart F income from qualified investment

(a) General rules

(1) Amount withdrawn

For purposes of this subpart, the amount of previously excluded subpart F income of any