

§ 958. Rules for determining stock ownership**(a) Direct and indirect ownership****(1) General rule**

For purposes of this subpart (other than section 960(a)(1)), stock owned means—

- (A) stock owned directly, and
- (B) stock owned with the application of paragraph (2).

(2) Stock ownership through foreign entities

For purposes of subparagraph (B) of paragraph (1), stock owned, directly or indirectly, by or for a foreign corporation, foreign partnership, or foreign trust or foreign estate (within the meaning of section 7701(a)(31)) shall be considered as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(3) Special rule for mutual insurance companies

For purposes of applying paragraph (1) in the case of a foreign mutual insurance company, the term “stock” shall include any certificate entitling the holder to voting power in the corporation.

(b) Constructive ownership

For purposes of sections 951(b), 954(d)(3), 956(c)(2), and 957, section 318(a) (relating to constructive ownership of stock) shall apply to the extent that the effect is to treat any United States person as a United States shareholder within the meaning of section 951(b), to treat a person as a related person within the meaning of section 954(d)(3), to treat the stock of a domestic corporation as owned by a United States shareholder of the controlled foreign corporation for purposes of section 956(c)(2), or to treat a foreign corporation as a controlled foreign corporation under section 957, except that—

(1) In applying paragraph (1)(A) of section 318(a), stock owned by a nonresident alien individual (other than a foreign trust or foreign estate) shall not be considered as owned by a citizen or by a resident alien individual.

(2) In applying subparagraphs (A), (B), and (C) of section 318(a)(2), if a partnership, estate, trust, or corporation owns, directly or indirectly, more than 50 percent of the total combined voting power of all classes of stock entitled to vote of a corporation, it shall be considered as owning all the stock entitled to vote.

(3) In applying subparagraph (C) of section 318(a)(2), the phrase “10 percent” shall be substituted for the phrase “50 percent” used in subparagraph (C).

(4) Subparagraph (A), (B), and (C) of section 318(a)(3) shall not be applied so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

Paragraphs (1) and (4) shall not apply for purposes of section 956(c)(2) to treat stock of a domestic corporation as not owned by a United States shareholder.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1018; amended Pub. L. 88-554, §4(b)(5), Aug. 31, 1964, 78 Stat. 763; Pub. L. 94-455, title X, §1021(b), Oct. 4, 1976, 90 Stat. 1619; Pub. L. 104-188, title I, §§1703(i)(4), 1704(t)(7), Aug. 20, 1996, 110 Stat. 1876, 1887.)

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-188, §1704(t)(7), substituted “section 960(a)(1)” for “sections 955(b)(1)(A) and (B), 955(c)(2)(A)(ii), and 960(a)(1)” in introductory provisions.

Subsec. (b). Pub. L. 104-188, §1703(i)(4), substituted “956(c)(2)” for “956(b)(2)” wherever appearing in introductory and closing provisions.

1976—Subsec. (b). Pub. L. 94-455 inserted “956(b)(2)” after “purposes of sections 951(b), 954(d)(3),”, “to treat the stock of a domestic corporation as owned by a United States shareholder of the controlled foreign corporation for purposes of section 956(b)(2)” after “meaning of section 954(d)(3)” and “Paragraphs (1) and (4) shall not apply for purposes of section 956(b)(2) to treat stock of a domestic corporation as not owned by a United States shareholder” following subpar. (4).

1964—Subsec. (b). Pub. L. 88-554 redesignated pars. (4) and (5) as (3) and (4), respectively, struck out former par. (3) which related to ownership of stock by a partnership, estate, trust, or corporation for purposes of applying first sentence of subpars. (A) and (B), and subpar. (C)(i) of section 318(a)(2) of this title, and made amendments throughout subsec. (b) to conform to changes made in section 318 of this title by Pub. L. 88-554.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1703(i)(4) of Pub. L. 104-188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103-66, §§13001-13444, to which such amendment relates, see section 1703(o) of Pub. L. 104-188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders within which or with which such taxable years of such corporations end, see section 1021(c) of Pub. L. 94-455, set out as a note under section 956 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88-554, set out as a note under section 318 of this title.

§ 959. Exclusion from gross income of previously taxed earnings and profits**(a) Exclusion from gross income of United States persons**

For purposes of this chapter, the earnings and profits of a foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a) shall not, when—

(1) such amounts are distributed to, or

(2) such amounts would, but for this subsection, be included under section 951(a)(1)(B) in the gross income of,

such shareholder (or any other United States person who acquires from any person any portion of the interest of such United States share-

holder in such foreign corporation, but only to the extent of such portion, and subject to such proof of the identity of such interest as the Secretary may by regulations prescribe) directly or indirectly through a chain of ownership described under section 958(a), be again included in the gross income of such United States shareholder (or of such other United States person). The rules of subsection (c) shall apply for purposes of paragraph (1) of this subsection and the rules of subsection (f) shall apply for purposes of paragraph (2) of this subsection.

(b) Exclusion from gross income of certain foreign subsidiaries

For purposes of section 951(a), the earnings and profits of a controlled foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a), shall not, when distributed through a chain of ownership described under section 958(a), be also included in the gross income of another controlled foreign corporation in such chain for purposes of the application of section 951(a) to such other controlled foreign corporation with respect to such United States shareholder (or to any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder in the controlled foreign corporation, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations).

(c) Allocation of distributions

For purposes of subsections (a) and (b), section 316(a) shall be applied by applying paragraph (2) thereof, and then paragraph (1) thereof—

(1) first to the aggregate of—

(A) earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section), and

(B) earnings and profits attributable to amounts included in gross income under section 951(a)(1)(C) (or which would have been included except for subsection (a)(3) of this section),

with any distribution being allocated between earnings and profits described in subparagraph (A) and earnings and profits described in subparagraph (B) proportionately on the basis of the respective amounts of such earnings and profits,

(2) then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under subparagraph (B) or (C) of section 951(a)(1) because of the exclusions in paragraphs (2) and (3) of subsection (a) of this section), and

(3) then to other earnings and profits.

References in this subsection to section 951(a)(1)(C) and subsection (a)(3) shall be treated as references to such provisions as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996.

(d) Distributions excluded from gross income not to be treated as dividends

Except as provided in section 960(a)(3), any distribution excluded from gross income under subsection (a) shall be treated, for purposes of this chapter, as a distribution which is not a dividend; except that such distributions shall immediately reduce earnings and profits.

(e) Coordination with amounts previously taxed under section 1248

For purposes of this section and section 960(b), any amount included in the gross income of any person as a dividend by reason of subsection (a) or (f) of section 1248 shall be treated as an amount included in the gross income of such person (or, in any case to which section 1248(e) applies, of the domestic corporation referred to in section 1248(e)(2)) under section 951(a)(1)(A).

(f) Allocation rules for certain inclusions

(1) In general

For purposes of this section, amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3).

(2) Treatment of distributions

In applying this section, actual distributions shall be taken into account before amounts that would be included under section 951(a)(1)(B) (determined without regard to this section).

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1019; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title I, §133(b)(1), July 18, 1984, 98 Stat. 668; Pub. L. 99-514, title XII, §1226(b), Oct. 22, 1986, 100 Stat. 2560; Pub. L. 100-647, title I, §1012(bb)(7)(A), Nov. 10, 1988, 102 Stat. 3536; Pub. L. 103-66, title XIII, §13231(c)(1), (2), (4)(A), (B), Aug. 10, 1993, 107 Stat. 497, 498; Pub. L. 104-188, title I, §1501(b)(4)-(8), Aug. 20, 1996, 110 Stat. 1826.)

REFERENCES IN TEXT

The date of the enactment of the Small Business Job Protection Act of 1996, referred to in subsec. (c), is the date of enactment of Pub. L. 104-188, which was approved Aug. 20, 1996.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-188, §1501(b)(4), (5), substituted “paragraph (2)” for “paragraphs (2) and (3)” in closing provisions, inserted “or” at end of par. (1), struck out “or” at end of par. (2), and struck out par. (3) which read as follows: “such amounts would, but for this subsection, be included under section 951(a)(1)(C) in the gross income of.”

Subsec. (c). Pub. L. 104-188, §1501(b)(6), inserted at end “References in this subsection to section 951(a)(1)(C) and subsection (a)(3) shall be treated as references to such provisions as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996.”

Subsec. (f)(1). Pub. L. 104-188, §1501(b)(7), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “For purposes of this section—

“(A) amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without

regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3), and

“(B) amounts that would be included under subparagraph (C) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2) to the extent the earnings so described were accumulated in taxable years beginning after September 30, 1993, and then to earnings described in subsection (c)(3).”

Subsec. (f)(2). Pub. L. 104-188, §1501(b)(8), substituted “section 951(a)(1)(B)” for “subparagraphs (B) and (C) of section 951(a)(1)”.

1993—Subsec. (a). Pub. L. 103-66, §13231(c)(2)(A), (4)(A), substituted in introductory provisions “earnings and profits” for “earnings and profits for taxable year” and inserted at end of closing provisions “The rules of subsection (c) shall apply for purposes of paragraph (1) of this subsection and the rules of subsection (f) shall apply for purposes of paragraphs (2) and (3) of this subsection.”

Subsec. (a)(3). Pub. L. 103-66, §13231(c)(1), added par. (3).

Subsec. (b). Pub. L. 103-66, §13231(c)(4)(A), substituted “earnings and profits” for “earnings and profits for a taxable year”.

Subsec. (c)(1). Pub. L. 103-66, §13231(c)(2)(C), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “first to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section).”

Subsec. (c)(2). Pub. L. 103-66, §13231(c)(4)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under section 951(a)(1)(B) because of the exclusion in subsection (a)(2) of this section), and”.

Subsec. (f). Pub. L. 103-66, §13231(c)(2)(B), added subsec. (f).

1988—Subsec. (e). Pub. L. 100-647 substituted “such person (or, in any case to which section 1248(e) applies, of the domestic corporation referred to in section 1248(e)(2)) under” for “such person under”.

1986—Subsec. (d). Pub. L. 99-514 inserted “; except that such distributions shall immediately reduce earnings and profits”.

1984—Subsec. (e). Pub. L. 98-369 added subsec. (e).

1976—Subsecs. (a), (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104-188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103-66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1012(bb)(7)(B), Nov. 10, 1988, 102 Stat. 3536, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply in the case of transactions to which section 1248(e) of the 1986 Code applies and which occur after December 31, 1986.”

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XII, §1226(c)(2), Oct. 22, 1986, 100 Stat. 2560, provided that: “The amendment made by

subsection (b) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986].”

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, §133(d)(2), (3), July 18, 1984, 98 Stat. 668, as amended by Pub. L. 99-514, §2, title XVIII, §1810(i)(2), Oct. 22, 1986, 100 Stat. 2095, 2829; Pub. L. 100-647, title I, §1018(g)(2), Nov. 10, 1988, 102 Stat. 3582, provided that:

“(2) SUBSECTIONS (b) AND (c).—Except as provided in paragraph (3), the amendments made by subsections (b) and (c) [amending this section and section 1248 of this title] shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies occurring after the date of the enactment of this Act [July 18, 1984].

“(3) ELECTION OF EARLIER DATE FOR CERTAIN TRANSACTIONS.—

“(A) IN GENERAL.—If the appropriate election is made under subparagraph (B), the amendments made by subsection (b) [amending this section and section 1248 of this title] shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of such Code applies occurring after October 9, 1975.

“(B) ELECTION.—

“(i) Subparagraph (A) shall apply with respect to transactions to which subsection (a) of section 1248 of such Code applies if the foreign corporation described in such subsection (or its successor in interest) so elects.

“(ii) Subparagraph (A) shall apply with respect to transactions to which subsection (f) of section 1248 of such Code applies if the domestic corporation described in section 1248(f)(1) of such Code (or its successor) so elects.

“(iii) Any election under clause (i) or (ii) shall be made not later than the date which is 1 year after the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986] and shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe.”

§ 960. Special rules for foreign tax credit

(a) Taxes paid by a foreign corporation

(1) Deemed paid credit

For purposes of subpart A of this part, if there is included under section 951(a) in the gross income of a domestic corporation any amount attributable to earnings and profits of a foreign corporation which is a member of a qualified group (as defined in section 902(b)) with respect to the domestic corporation, then, except to the extent provided in regulations, section 902 shall be applied as if the amount so included were a dividend paid by such foreign corporation (determined by applying section 902(c) in accordance with section 904(d)(3)(B)).

(2) Taxes previously deemed paid by domestic corporation

If a domestic corporation receives a distribution from a foreign corporation, any portion of which is excluded from gross income under section 959, the income, war profits, and excess profits taxes paid or deemed paid by such foreign corporation to any foreign country or to any possession of the United States in connection with the earnings and profits of such foreign corporation from which such distribution is made shall not be taken into account for purposes of section 902, to the extent such taxes were deemed paid by a domestic corpora-