

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-

tion under paragraph (1) for any prior taxable year.

**(3) Taxes paid by foreign corporation and not previously deemed paid by domestic corporation**

Any portion of a distribution from a foreign corporation received by a domestic corporation which is excluded from gross income under section 959(a) shall be treated by the domestic corporation as a dividend, solely for purposes of taking into account under section 902 any income, war profits, or excess profits taxes paid to any foreign country or to any possession of the United States, on or with respect to the accumulated profits of such foreign corporation from which such distribution is made, which were not deemed paid by the domestic corporation under paragraph (1) for any prior taxable year.

**(b) Special rules for foreign tax credit in year of receipt of previously taxed earnings and profits**

**(1) Increase in section 904 limitation**

In the case of any taxpayer who—

(A) either (i) chose to have the benefits of subpart A of this part for a taxable year beginning after September 30, 1993, in which he was required under section 951(a) to include any amount in his gross income, or (ii) did not pay or accrue for such taxable year any income, war profits, or excess profits taxes to any foreign country or to any possession of the United States,

(B) chooses to have the benefits of subpart A of this part for any taxable year in which he receives 1 or more distributions or amounts which are excludable from gross income under section 959(a) and which are attributable to amounts included in his gross income for taxable years referred to in subparagraph (A), and

(C) for the taxable year in which such distributions or amounts are received, pays, or is deemed to have paid, or accrues income, war profits, or excess profits taxes to a foreign country or to any possession of the United States with respect to such distributions or amounts,

the limitation under section 904 for the taxable year in which such distributions or amounts are received shall be increased by the lesser of the amount of such taxes paid, or deemed paid, or accrued with respect to such distributions or amounts or the amount in the excess limitation account as of the beginning of such taxable year.

**(2) Excess limitation account**

**(A) Establishment of account**

Each taxpayer meeting the requirements of paragraph (1)(A) shall establish an excess limitation account. The opening balance of such account shall be zero.

**(B) Increases in account**

For each taxable year beginning after September 30, 1993, the taxpayer shall increase the amount in the excess limitation account by the excess (if any) of—

(i) the amount by which the limitation under section 904(a) for such taxable year was increased by reason of the total amount of the inclusions in gross income under section 951(a) for such taxable year, over

(ii) the amount of any income, war profits, and excess profits taxes paid, or deemed paid, or accrued to any foreign country or possession of the United States which were allowable as a credit under section 901 for such taxable year and which would not have been allowable but for the inclusions in gross income described in clause (i).

Proper reductions in the amount added to the account under the preceding sentence for any taxable year shall be made for any increase in the credit allowable under section 901 for such taxable year by reason of a carryback if such increase would not have been allowable but for the inclusions in gross income described in clause (i).

**(C) Decreases in account**

For each taxable year beginning after September 30, 1993, for which the limitation under section 904 was increased under paragraph (1), the taxpayer shall reduce the amount in the excess limitation account by the amount of such increase.

**(3) Distributions of income previously taxed in years beginning before October 1, 1993**

If the taxpayer receives a distribution or amount in a taxable year beginning after September 30, 1993, which is excluded from gross income under section 959(a) and is attributable to any amount included in gross income under section 951(a) for a taxable year beginning before October 1, 1993, the limitation under section 904 for the taxable year in which such amount or distribution is received shall be increased by the amount determined under this subsection as in effect on the day before the date of the enactment of the Revenue Reconciliation<sup>1</sup> Act of 1993.

**(4) Cases in which taxes not to be allowed as deduction**

In the case of any taxpayer who—

(A) chose to have the benefits of subpart A of this part for a taxable year in which he was required under section 951(a) to include in his gross income an amount in respect of a controlled foreign corporation, and

(B) does not choose to have the benefits of subpart A of this part for the taxable year in which he receives a distribution or amount which is excluded from gross income under section 959(a) and which is attributable to earnings and profits of the controlled foreign corporation which was included in his gross income for the taxable year referred to in subparagraph (A),

no deduction shall be allowed under section 164 for the taxable year in which such distribution or amount is received for any income, war profits, or excess profits taxes paid or accrued

<sup>1</sup> So in original. Probably should be "Reconciliation".

to any foreign country or to any possession of the United States on or with respect to such distribution or amount.

**(5) Insufficient taxable income**

If an increase in the limitation under this subsection exceeds the tax imposed by this chapter for such year, the amount of such excess shall be deemed an overpayment of tax for such year.

**(c) Limitation with respect to section 956 inclusions**

**(1) In general**

If there is included under section 951(a)(1)(B) in the gross income of a domestic corporation any amount attributable to the 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, the amount of any foreign income taxes deemed to have been paid during the taxable year by such domestic corporation under section 902 by reason of subsection (a) with respect to such inclusion in gross income shall not exceed the amount of the foreign income taxes which would have been deemed to have been paid during the taxable year by such domestic corporation if cash in an amount equal to the amount of such inclusion in gross income were distributed as a series of distributions (determined without regard to any foreign taxes which would be imposed on an actual distribution) through the chain of ownership which begins with such foreign corporation and ends with such domestic corporation.

**(2) Authority to prevent abuse**

The Secretary shall issue such regulations or other guidance as is necessary or appropriate to carry out the purposes of this subsection, including regulations or other guidance which prevent the inappropriate use of the foreign corporation's foreign income taxes not deemed paid by reason of paragraph (1).

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1020; amended Pub. L. 94-455, title X, §§1031(b)(1), 1033(b)(2), 1037(a), Oct. 4, 1976, 90 Stat. 1622, 1628, 1633; Pub. L. 99-514, title XII, §1202(b), Oct. 22, 1986, 100 Stat. 2530; Pub. L. 103-66, title XIII, §13233(b)(1), Aug. 10, 1993, 107 Stat. 502; Pub. L. 105-34, title XI, §1113(b), Aug. 5, 1997, 111 Stat. 971; Pub. L. 111-226, title II, §214(a), Aug. 10, 2010, 124 Stat. 2399.)

REFERENCES IN TEXT

The date of the enactment of the Revenue Reconciliation Act of 1993, referred to in subsec. (b)(3), is the date of enactment of Pub. L. 103-66, which was approved Aug. 10, 1993.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111-226 added subsec. (c).

1997—Subsec. (a)(1). Pub. L. 105-34 amended heading and text of par. (1) generally. Prior to amendment, text read as follows: "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—

"(A) of a foreign corporation (hereafter in this subsection referred to as the 'first foreign corporation') at least 10 percent of the voting stock of which is owned by such domestic corporation, or

"(B) of a second foreign corporation (hereinafter in this subsection referred to as the 'second foreign corporation') at least 10 percent of the voting stock of which is owned by the first foreign corporation, or

"(C) of a third foreign corporation (hereinafter in this subsection referred to as the 'third foreign corporation') at least 10 percent of the voting stock of which is owned by the second foreign corporation, then, except to the extent provided in regulations, such domestic corporation shall be deemed to have paid a portion of such foreign corporation's post-1986 foreign income taxes determined under section 902 in the same manner 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)). This paragraph shall not apply with respect to any amount included in the gross income of such domestic corporation attributable to earnings and profits of the second foreign corporation or of the third foreign corporation unless, in the case of the second foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(A) is satisfied, and in the case of the third foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(B) is satisfied."

1993—Subsec. (b). Pub. L. 103-66 added pars. (1) to (3), redesignated former pars. (3) and (4) as (4) and (5), respectively, and struck out former par. (1) relating to increase in section 904 limitation and former par. (2) relating to the amount of increase.

1986—Subsec. (a)(1). Pub. L. 99-514 substituted "then, except to the extent provided in regulations, such domestic corporation shall be deemed to have paid a portion of such foreign corporation's post-1986 foreign income taxes determined under section 902 in the same manner 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))" for "then, under regulations prescribed by the Secretary, such domestic corporation shall be deemed to have paid the same proportion of the total income, war profits, and excess profits taxes paid (or deemed paid) by such foreign corporation to a foreign country or possession of the United States for the taxable year on or with respect to the earnings and profits of such foreign corporation which the amount of earnings and profits of such foreign corporation so included in gross income of the domestic corporation bears to the entire amount of the earnings and profits of such corporation for such taxable year".

1976—Subsec. (a)(1). Pub. L. 94-455, §§1033(b)(2), 1037(a), substituted "bears to the entire amount of the earnings and profits of such foreign corporation for such taxable year" for "bears to—" after "gross income of the domestic corporation", struck out subpars. (C) and (D) relating to corporations which are and are not less developed country corporations, inserted in subpar. (A) "(hereafter in this subsection referred to as the 'first foreign corporation')" after "foreign corporation", substituted in subpar. (B) "of a second foreign corporation (hereinafter in this subsection referred to as the 'second foreign corporation') at least 10 percent of the voting stock of which is owned by the first foreign corporation, or" for "of a foreign corporation at least 50 percent of the voting stock of which is owned by a foreign corporation at least 10 percent of the voting stock of which in turn owned by such domestic corporation" after "(B)", added subpar. (C), and inserted at end "This paragraph shall not apply with respect to any amount included in the gross income of such domestic corporation attributable to earnings and profits of the second foreign corporation or of the third foreign corporation unless, in the case of the second foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(A) is satisfied, and in the case of the third foreign corporation, the percentage-of-voting-stock requirement of section 902(b)(3)(B) is satisfied."

Subsec. (b). Pub. L. 94-455, §1031(b)(1), struck out "applicable" in par. (1) after "amount, the", in par. (2)

after “increase of the”, and in subpar. (A) of par. (2) after “by which the”.

**EFFECTIVE DATE OF 2010 AMENDMENT**

Pub. L. 111-226, title II, §214(b), Aug. 10, 2010, 124 Stat. 2399, provided that: “The amendment made by this section [amending this section] shall apply to acquisitions of United States property (as defined in section 956(c) of the Internal Revenue Code of 1986) after December 31, 2010.”

**EFFECTIVE DATE OF 1997 AMENDMENT**

Amendment by Pub. L. 105-34 applicable, with special rule, to taxes of foreign corporations for taxable years of such corporations beginning after Aug. 5, 1997, see section 1113(c) of Pub. L. 105-34, set out as a note under section 902 of this title.

**EFFECTIVE DATE OF 1993 AMENDMENT**

Pub. L. 103-66, title XIII, §13233(b)(2), Aug. 10, 1993, 107 Stat. 504, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after September 30, 1993.”

**EFFECTIVE DATE OF 1986 AMENDMENT**

Amendment by Pub. L. 99-514 applicable to distributions by foreign corporations out of, and to inclusions under section 951(a) of this title attributable to, earnings and profits for taxable years beginning after Dec. 31, 1986, see section 1202(e) of Pub. L. 99-514, set out as a note under section 902 of this title.

**EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by section 1031(b)(1) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1975, see section 1031(c) of Pub. L. 94-455, set out as a note under section 904 of this title.

Amendment by section 1033(b)(2) of Pub. L. 94-455 applicable in respect of any distribution received by a domestic corporation after Dec. 31, 1977, and in respect of any distribution received by a domestic corporation before Jan. 1, 1978, in a taxable year of such corporation beginning after Dec. 31, 1975, but only to the extent that such distribution is made out of the accumulated profits of a foreign corporation for a taxable year beginning after Dec. 31, 1975, see section 1033(c) of Pub. L. 94-455, set out as a note under section 902 of this title.

Pub. L. 94-455, title X, §1037(b), Oct. 4, 1976, 90 Stat. 1634, 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 with respect to earnings and profits of a foreign corporation, included, under section 951(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], in the gross income of a domestic corporation in taxable years beginning after December 31, 1976.”

**§ 961. Adjustments to basis of stock in controlled foreign corporations and of other property**

**(a) Increase in basis**

Under regulations prescribed by the Secretary, the basis of a United States shareholder's stock in a controlled foreign corporation, and the basis of property of a United States shareholder by reason of which he is considered under section 958(a)(2) as owning stock of a controlled foreign corporation, shall be increased by the amount required to be included in his gross income under section 951(a) with respect to such stock or with respect to such property, as the case may be, but only to the extent to which such amount was included in the gross income of such United States shareholder. In the case of a United States shareholder who has made an election under section 962 for the taxable year,

the increase in basis provided by this subsection shall not exceed an amount equal to the amount of tax paid under this chapter with respect to the amounts required to be included in his gross income under section 951(a).

**(b) Reduction in basis**

**(1) In general**

Under regulations prescribed by the Secretary, the adjusted basis of stock or other property with respect to which a United States shareholder or a United States person receives an amount which is excluded from gross income under section 959(a) shall be reduced by the amount so excluded. In the case of a United States shareholder who has made an election under section 962 for any prior taxable year, the reduction in basis provided by this paragraph shall not exceed an amount equal to the amount received which is excluded from gross income under section 959(a) after the application of section 962(d).

**(2) Amount in excess of basis**

To the extent that an amount excluded from gross income under section 959(a) exceeds the adjusted basis of the stock or other property with respect to which it is received, the amount shall be treated as gain from the sale or exchange of property.

**(c) Basis adjustments in stock held by foreign corporations**

Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning stock in a controlled foreign corporation which is owned by another controlled foreign corporation, then adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to—

(1) the basis of such stock, and

(2) the basis of stock in any other controlled foreign corporation by reason of which the United States shareholder is considered under section 958(a)(2) as owning the stock described in paragraph (1),

but only for the purposes of determining the amount included under section 951 in the gross income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, 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). The preceding sentence shall not apply with respect to any stock to which a basis adjustment applies under subsection (a) or (b).

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1022; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105-34, title XI, §1112(b)(1), Aug. 5, 1997, 111 Stat. 969; Pub. L. 109-135, title IV, §409(b), Dec. 21, 2005, 119 Stat. 2635.)

**AMENDMENTS**

2005—Subsec. (c). Pub. L. 109-135 amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: “Under regulations prescribed by the Secretary, if a United States shareholder is treated