

1997—Subsec. (e). Pub. L. 105-34 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: "This section shall apply to section 988 transactions entered into by an individual only to the extent expenses properly allocable to such transactions meet the requirements of section 162 or 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes)."

1993—Subsec. (d)(1). Pub. L. 103-66 substituted "section 475 or 1256" for "section 1256" and "Sections 475, 1092, and 1256" for "Sections 1092 and 1256".

1989—Subsec. (a). Pub. L. 101-239 inserted introductory provision "Notwithstanding any other provision of this chapter—".

1988—Subsec. (a)(3)(B)(i). Pub. L. 100-647, §1012(v)(8), inserted at end "If an individual does not have a tax home (as so defined), the residence of such individual shall be the United States if such individual is a United States citizen or a resident alien and shall be a country other than the United States if such individual is not a United States citizen or a resident alien."

Subsec. (a)(3)(B)(iii). Pub. L. 100-647, §1012(v)(7), added cl. (iii).

Subsec. (b)(3). Pub. L. 100-647, §1012(v)(3)(A), added par. (3).

Subsec. (c)(1)(B)(iii). Pub. L. 100-647, §6130(a), struck out "unless such instrument would be marked to market under section 1256 if held on the last day of the taxable year" after "similar financial instrument".

Pub. L. 100-647, §1012(v)(6), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: "Entering into or acquiring any forward contract, futures contract, option, or similar financial instrument if such instrument is not marked to market at the close of the taxable year under section 1256."

Subsec. (c)(1)(C)(i)(II). Pub. L. 100-647, §1012(v)(3)(B), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: "for purposes of determining the foreign currency gain or loss from such transaction, paragraphs (1) and (2) of subsection (b) shall be applied by substituting 'acquisition date' for 'booking date' and 'disposition' for 'payment date'."

Subsec. (c)(1)(D), (E). Pub. L. 100-647, §6130(b), added subpars. (D) and (E).

Subsec. (c)(2)(C). Pub. L. 100-647, §1012(v)(3)(C), struck out subpar. (C) which defined "booking date" in the case of a transaction described in par. (1)(B)(iii) as the date on which the position is entered into or acquired.

Subsec. (c)(3). Pub. L. 100-647, §1012(v)(3)(D), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The term 'payment date' means—

"(A) in the case of a transaction described in paragraph (1)(B)(i) or (ii), the date on which payment is made or received, or

"(B) in the case of a transaction described in paragraph (1)(B)(iii), the date payment is made or received or the date the taxpayer's rights with respect to the position are terminated."

Subsec. (c)(5). Pub. L. 100-647, §1012(v)(2)(A), added par. (5).

Subsec. (d)(1). Pub. L. 100-647, §1012(v)(4), substituted "this subtitle" for "this section".

#### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by 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 1997 AMENDMENT

Pub. L. 105-34, title XI, §1104(b), Aug. 5, 1997, 111 Stat. 967, provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997."

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to all taxable years ending on or after Dec. 31, 1993, with special

rules for taxpayers required to change accounting methods and for floor specialists and market makers, see section 13223(c) of Pub. L. 103-66, set out as an Effective Date note under section 475 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

Pub. L. 100-647, title I, §1012(v)(2)(B), Nov. 10, 1988, 102 Stat. 3529, provided that: "The amendment made by subparagraph (A) [amending this section] shall not apply in any case in which the taxpayer takes or makes delivery before June 11, 1987."

Amendment by section 1012(v)(3), (4), (6)–(8) 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, §6130(d), Nov. 10, 1988, 102 Stat. 3719, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 1092 of this title] shall apply with respect to forward contracts, future contracts, options, and similar instruments entered into or acquired after October 21, 1988.

"(2) TIME FOR MAKING ELECTION.—The time for making any election under subparagraph (D) or (E) of section 988(c)(1) of the 1986 Code shall not expire before the date 30 days after the date of the enactment of this Act [Nov. 10, 1988].

"(3) TRANSITIONAL RULES.—

"(A) The requirements of subclause (IV) of section 988(c)(1)(E)(iii) of the 1986 Code (as added by subsection (b)) shall not apply to periods before the date of the enactment of this Act.

"(B) In the case of any partner in an existing partnership, the 20-percent ownership requirements of subclause (I) of such section 988(c)(1)(E)(iii) shall be treated as met during any period during which such partner does not own a percentage interest in the capital or profits of such partnership greater than 33 $\frac{1}{3}$  percent (or, if lower, the lowest such percentage interest of such partner during any prior period after October 21, 1988, during which such partnership is in existence). For purposes of the preceding sentence, the term 'existing partnership' means any partnership if—

"(i) such partnership was in existence on October 21, 1988, and principally engaged on such date in buying and selling options, futures, or forwards with respect to commodities, or

"(ii) a registration statement was filed with respect to such partnership with the Securities and Exchange Commission on or before such date and such registration statement indicated that the principal activity of such partnership will consist of buying and selling instruments referred to in clause (i)."

#### EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99-514, set out as a note under section 985 of this title.

### § 989. Other definitions and special rules

#### (a) Qualified business unit

For purposes of this subpart, the term "qualified business unit" means any separate and clearly identified unit of a trade or business of a taxpayer which maintains separate books and records.

**(b) Appropriate exchange rate**

Except as provided in regulations, for purposes of this subpart, the term "appropriate exchange rate" means—

- (1) in the case of an actual distribution of earnings and profits, the spot rate on the date such distribution is included in income,
- (2) in the case of an actual or deemed sale or exchange of stock in a foreign corporation treated as a dividend under section 1248, the spot rate on the date the deemed dividend is included in income,
- (3) in the case of any amounts included in income under section 951(a)(1)(A) or 1293(a), the average exchange rate for the taxable year of the foreign corporation, or
- (4) in the case of any other qualified business unit of a taxpayer, the average exchange rate for the taxable year of such qualified business unit.

For purposes of the preceding sentence, any amount included in income under section 951(a)(1)(B) shall be treated as an actual distribution made on the last day of the taxable year for which such amount was so included.

**(c) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subpart, including regulations—

- (1) setting forth procedures to be followed by taxpayers with qualified business units using a net worth method of accounting before the enactment of this subpart,
- (2) limiting the recognition of foreign currency loss on certain remittances from qualified business units,
- (3) providing for the recharacterization of interest and principal payments with respect to obligations denominated in certain hyperinflationary currencies,
- (4) providing for alternative adjustments to the application of section 905(c),
- (5) providing for the appropriate treatment of related party transactions (including transactions between qualified business units of the same taxpayer), and
- (6) setting forth procedures for determining the average exchange rate for any period.

(Added Pub. L. 99-514, title XII, §1261(a), Oct. 22, 1986, 100 Stat. 2590; amended Pub. L. 100-647, title I, §1012(v)(5), Nov. 10, 1988, 102 Stat. 3529; Pub. L. 103-66, title XIII, §13231(c)(4)(C), Aug. 10, 1993, 107 Stat. 499; Pub. L. 104-188, title I, §1501(b)(9), Aug. 20, 1996, 110 Stat. 1826; Pub. L. 105-34, title XI, §1102(b)(2), (3), Aug. 5, 1997, 111 Stat. 966; Pub. L. 108-357, title IV, §413(c)(17), Oct. 22, 2004, 118 Stat. 1508.)

REFERENCES IN TEXT

The enactment of this subpart, referred to in subsec. (c)(1), probably means the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

AMENDMENTS

- 2004—Subsec. (b)(3). Pub. L. 108-357 struck out “, 551(a),” after “section 951(a)(1)(A)”.
- 1997—Subsec. (b)(3), (4). Pub. L. 105-34, §1102(b)(3), struck out “weighted” before “average exchange rate”.
- Subsec. (c)(6). Pub. L. 105-34, §1102(b)(2), added par. (6).

1996—Subsec. (b). Pub. L. 104-188 substituted “section 951(a)(1)(B)” for “subparagraph (B) or (C) of section 951(a)(1)” in closing provisions.

1993—Subsec. (b). Pub. L. 103-66 substituted “subparagraph (B) or (C) of section 951(a)(1)” for “section 951(a)(1)(B)” in last sentence.

1988—Subsec. (b). Pub. L. 100-647 substituted in par. (3) “section 951(a)(1)(A)” for “section 951(a)” and inserted at end “For purposes of the preceding sentence, any amount included in income under section 951(a)(1)(B) shall be treated as an actual distribution made on the last day of the taxable year for which such amount was so included.”

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to taxes paid or accrued in taxable years beginning after Dec. 31, 1997, see section 1102(c)(1) of Pub. L. 105-34, set out as a note under section 986 of this title.

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

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

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99-514, set out as a note under section 985 of this title.

PART IV—DOMESTIC INTERNATIONAL SALES CORPORATIONS

Subpart	Sec. <sup>1</sup>
A. Treatment of qualifying corporations ...	991
B. Treatment of distributions to shareholders .....	995

AMENDMENTS

1971—Pub. L. 92-178, title V, §501, Dec. 10, 1971, 85 Stat. 535, added part IV to subchapter N of chapter 1.

SUBPART A—TREATMENT OF QUALIFYING CORPORATIONS

Sec.	
991.	Taxation of a domestic international sales corporation.

<sup>1</sup> Section numbers editorially supplied.