

Pub. L. 98-369, div. A, title I, §130(d), July 18, 1984, 98 Stat. 661, provided that: “The amendments made by this section [amending this section and sections 1442 and 7651 of this title] shall apply to payments made after March 1, 1984, in taxable years ending after such date.”

EFFECTIVE DATE OF 1976 AMENDMENT

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

EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92-606, §2, Oct. 31, 1972, 86 Stat. 1497, provided in part that: “The amendments made by section 1(e)(1) [amending this section] shall apply with respect to taxable years beginning after December 31, 1971.”

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-178 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 313(f) of Pub. L. 92-178, set out as a note under section 871 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.

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

For nonapplication of amendments by sections 1211(b)(6) and 1214(c)(2) of Pub. L. 99-514 to the extent application of such amendments would be contrary to 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)(3), (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.

§ 882. Tax on income of foreign corporations connected with United States business

(a) Imposition of tax

(1) In general

A foreign corporation engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 11 or 59A,¹ on its taxable income which is effectively connected with the conduct of a trade or business within the United States.

(2) Determination of taxable income

In determining taxable income for purposes of paragraph (1), gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States.

(3) [Cross reference ²]

For special tax treatment of gain or loss from the disposition by a foreign corporation of a United States real property interest, see section 897.

(b) Gross income

In the case of a foreign corporation, except where the context clearly indicates otherwise, gross income includes only—

- (1) gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and
- (2) gross income which is effectively connected with the conduct of a trade or business within the United States.

(c) Allowance of deductions and credits

(1) Allocation of deductions

(A) General rule

In the case of a foreign corporation, the deductions shall be allowed only for purposes of subsection (a) and (except as provided by subparagraph (B)) only if and to the extent that they are connected with income which is effectively connected with the conduct of a trade or business within the United States; and the proper apportionment and allocation of the deductions for this purpose shall be determined as provided in regulations prescribed by the Secretary.

(B) Charitable contributions

The deduction for charitable contributions and gifts provided by section 170 shall be allowed whether or not connected with income which is effectively connected with the conduct of a trade or business within the United States.

(2) Deductions and credits allowed only if return filed

A foreign corporation shall receive the benefit of the deductions and credits allowed to it in this subtitle only by filing or causing to be filed with the Secretary a true and accurate return, in the manner prescribed in subtitle F, including therein all the information which the Secretary may deem necessary for the calculation of such deductions and credits. The preceding sentence shall not apply for purposes of the tax imposed by section 541 (relating to personal holding company tax), and shall not be construed to deny the credit provided by section 33 for tax withheld at source or the credit provided by section 34 for certain uses of gasoline.

(3) Foreign tax credit

Except as provided by section 906, foreign corporations shall not be allowed the credit against the tax for taxes of foreign countries and possessions of the United States allowed by section 901.

(4) Cross reference

For rule that certain foreign taxes are not to be taken into account in determining deduction or credit, see section 906(b)(1).

¹ So in original. The comma probably should not appear.

² Par. (3) heading editorially supplied.

(d) Election to treat real property income as income connected with United States business

(1) In general

A foreign corporation which during the taxable year derives any income—

(A) from real property located in the United States, or from any interest in such real property, including (i) gains from the sale or exchange of real property or an interest therein, (ii) rents or royalties from mines, wells, or other natural deposits, and (iii) gains described in section 631(b) or (c), and

(B) which, but for this subsection, would not be treated as income effectively connected with the conduct of a trade or business within the United States,

may elect for such taxable year to treat all such income as income which is effectively connected with the conduct of a trade or business within the United States. In such case, such income shall be taxable as provided in subsection (a)(1) whether or not such corporation is engaged in trade or business within the United States during the taxable year. An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary with respect to any taxable year.

(2) Election after revocation, etc.

Paragraphs (2) and (3) of section 871(d) shall apply in respect of elections under this subsection in the same manner and to the same extent as they apply in respect of elections under section 871(d).

(e) Interest on United States obligations received by banks organized in possessions

In the case of a corporation created or organized in, or under the law of, a possession of the United States which is carrying on the banking business in a possession of the United States, interest on obligations of the United States which is not portfolio interest (as defined in section 881(c)(2)) shall—

(1) for purposes of this subpart, be treated as income which is effectively connected with the conduct of a trade or business within the United States, and

(2) shall be taxable as provided in subsection (a)(1) whether or not such corporation is engaged in trade or business within the United States during the taxable year.

(f) Returns of tax by agent

If any foreign corporation has no office or place of business in the United States but has an agent in the United States, the return required under section 6012 shall be made by the agent.

(Aug. 16, 1954, ch. 736, 68A Stat. 282; Pub. L. 89-809, title I, §104(b)(1), Nov. 13, 1966, 80 Stat. 1555; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title III, §301(b)(13), Nov. 6, 1978, 92 Stat. 2822; Pub. L. 96-499, title XI, §1122(c)(2), Dec. 5, 1980, 94 Stat. 2687; Pub. L. 97-424, title V, §515(b)(6)(F), Jan. 6, 1983, 96 Stat. 2182; Pub. L. 98-369, div. A, title IV, §474(r)(19), July 18, 1984, 98 Stat. 843; Pub. L.

99-514, title VII, §701(e)(4)(F), title XII, §1236(a), Oct. 22, 1986, 100 Stat. 2343, 2576; Pub. L. 100-647, title I, §1012(s)(2)(B), title II, §2001(c)(2), title VI, §6133(a), Nov. 10, 1988, 102 Stat. 3527, 3594, 3721; Pub. L. 113-295, div. A, title II, §221(a)(12)(F), Dec. 19, 2014, 128 Stat. 4038; Pub. L. 115-97, title I, §§12001(b)(14), 13001(b)(2)(L), 14401(d)(2), Dec. 22, 2017, 131 Stat. 2094, 2097, 2233.)

AMENDMENTS

2017—Subsec. (a)(1). Pub. L. 115-97, §14401(d)(2), which directed insertion of “or 59A,” after “section 11,” was executed by making the insertion after “section 11” to reflect the probable intent of Congress and the amendment by Pub. L. 115-97, §12001(b)(14). See below.

Pub. L. 115-97, §13001(b)(2)(L), struck out “or 1201(a)” before “on its taxable income”.

Pub. L. 115-97, §12001(b)(14), struck out “, 55,” after “section 11”.

2014—Subsec. (a)(1). Pub. L. 113-295 struck out “, 59A” after “section 11, 55”.

1988—Subsec. (a)(1). Pub. L. 100-647, §2001(c)(2), inserted reference to section 59A.

Subsec. (b). Pub. L. 100-647, §1012(s)(2)(B), inserted “, except where the context clearly indicates otherwise” after “foreign corporation”.

Subsec. (e). Pub. L. 100-647, §6133(a), substituted “interest on obligations of the United States which is not portfolio interest (as defined in section 881(c)(2))” for “interest on obligations of the United States”, and struck out at end “The preceding sentence shall not apply to any Guam corporation which is treated as not being a foreign corporation by section 881(b)(1) for the taxable year.”

1986—Subsec. (a)(1). Pub. L. 99-514, §701(e)(4)(F), inserted reference to section 55.

Subsec. (e). Pub. L. 99-514, §1236(a), inserted “The preceding sentence shall not apply to any Guam corporation which is treated as not being a foreign corporation by section 881(b)(1) for the taxable year.”

1984—Subsec. (c)(2). Pub. L. 98-369 substituted reference to section “33” for “32” and “34” for “39”.

1983—Subsec. (c)(2). Pub. L. 97-424 struck out “and lubricating oil” after “gasoline”.

1980—Subsec. (a)(3). Pub. L. 96-499 added par. (3).

1978—Subsec. (a). Pub. L. 95-600 substituted in subsec. (a) heading “Imposition of tax” for “Normal tax and surtax” and in par. (1) heading “In general” for “Imposition of tax”.

1976—Subsecs. (c)(1)(A), (2), (d). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

1966—Pub. L. 89-809 substantially revised the income tax treatment of foreign corporations, introduced the concept of taxable income effectively connected with the conduct of a trade or business within the United States into provisions dealing with the imposition of tax, substituted a concept of gross income that included gross income derived from sources within the United States not effectively connected with the conduct of a trade or business within the United States and gross income effectively connected with the conduct of a trade or business within the United States for a concept of gross income that included only gross income from sources within the United States, and inserted provisions for an election to treat real property income as income connected with United States business, treatment of interest on United States obligations received by banks organized in possessions, and the returns of tax by agents, and inserted cross reference to section 906(b)(1).

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by section 12001(b)(14) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 12001(c) of Pub. L. 115-97, set out as a note under section 11 of this title.

Amendment by section 13001(b)(2)(L) of Pub. L. 115-97 applicable to taxable years beginning after Dec. 31,

2017, see section 13001(c)(1) of Pub. L. 115-97, set out as a note under section 11 of this title.

Amendment by section 14401(d)(2) of Pub. L. 115-97 applicable to base erosion payments (as defined in section 59A(d) of this title) paid or accrued in taxable years beginning after Dec. 31, 2017, see section 14401(e) of Pub. L. 115-97, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 701(e)(4)(F) 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.

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99-499, title V, to which it relates, see section 2001(e) of Pub. L. 100-647, set out as a note under section 56 of this title.

Pub. L. 100-647, title VI, §6133(c), Nov. 10, 1988, 102 Stat. 3721, provided that: "The amendments made by this subsection [probably means 'this section', which amended sections 882 and 884 of this title] shall apply to taxable years beginning after December 31, 1988."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 701(e)(4)(F) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99-514, set out as an Effective Date note under section 55 of this title.

Pub. L. 99-514, title XII, §1236(b), Oct. 22, 1986, 100 Stat. 2576, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after November 16, 1985."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97-424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-499 applicable to disposition after June 18, 1980, see section 1125(a) of Pub. L. 96-499, set out as an Effective Date note under section 897 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as a note under section 11 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.

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

For applicability of amendment by section 701(e)(4)(F) 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.

§ 883. Exclusions from gross income

(a) Income of foreign corporations from ships and aircraft

The following items shall not be included in gross income of a foreign corporation, and shall be exempt from taxation under this subtitle:

(1) Ships operated by certain foreign corporations

Gross income derived by a corporation organized in a foreign country from the international operation of a ship or ships if such foreign country grants an equivalent exemption to corporations organized in the United States.

(2) Aircraft operated by certain foreign corporations

Gross income derived by a corporation organized in a foreign country from the international operation of aircraft if such foreign country grants an equivalent exemption to corporations organized in the United States.

(3) Railroad rolling stock of foreign corporations

Earnings derived from payments by a common carrier for the use on a temporary basis (not expected to exceed a total of 90 days in any taxable year) of railroad rolling stock owned by a corporation of a foreign country which grants an equivalent exemption to corporations organized in the United States.

(4) Special rules

The rules of paragraphs (6), (7), and (8) of section 872(b) shall apply for purposes of this subsection.

(5) Special rule for countries which tax on residence basis

For purposes of this subsection, there shall not be taken into account any failure of a foreign country to grant an exemption to a corporation organized in the United States if such corporation is subject to tax by such foreign country on a residence basis pursuant to provisions of foreign law which meets such standards (if any) as the Secretary may prescribe.

(b) Earnings derived from communications satellite system

The earnings derived from the ownership or operation of a communications satellite system by a foreign entity designated by a foreign government to participate in such ownership or operation shall be exempt from taxation under this subtitle, if the United States, through its designated entity, participates in such system pursuant to the Communications Satellite Act of 1962 (47 U.S.C. 701 and following).

(c) Treatment of certain foreign corporations

(1) In general

Paragraph (1) or (2) of subsection (a) (as the case may be) shall not apply to any foreign