

section [amending this section] applies to transfers of player contracts in connection with any sale or exchange of a franchise after December 31, 1975.”

Amendment by section 1901(a)(140), (b)(3)(K), (11)(D) of 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.

Amendment by section 1951(c)(2)(C) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1976, see section 1951(d) of Pub. L. 94-455, set out as a note under section 72 of this title.

Amendment by section 2122(b)(3) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1976, see section 2122(c) of Pub. L. 94-455, as amended, set out as an Effective Date note under section 190 of this title.

Amendment by section 2124(a)(2) of Pub. L. 94-455 applicable with respect to additions to capital account made after June 14, 1976 and before June 15, 1981, see section 2124(a)(4) of Pub. L. 94-455, set out as an Effective Date note under section 642 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-81 applicable to dispositions after Dec. 31, 1969, in taxable years ending after such date, with special provision for an election in the case of dispositions occurring before Aug. 9, 1975, see section 2(c) of Pub. L. 94-81, set out as a note under section 1250 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by section 104(a)(2) of Pub. L. 92-178 applicable to property described in section 50 of this title relating to restoration of credit, see section 104(h) of Pub. L. 92-178, set out as a note under section 48 of this title.

Amendment by section 303(c)(1), (2) of Pub. L. 92-178 applicable to taxable years ending after Dec. 31, 1971, see section 303(d) of Pub. L. 92-178, set out as a note under section 642 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Pub. L. 91-172, title II, §212(a)(3), Dec. 30, 1969, 83 Stat. 571, provided that: “The amendments made by paragraphs (1) and (2) [amending this section] shall apply with respect to taxable years beginning after December 31, 1969.”

Amendment by section 704(b)(4) of Pub. L. 91-172 applicable to taxable years ending after Dec. 31, 1968, see section 704(c) of Pub. L. 91-172, set out as a note under section 169 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable with respect to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 203(f)(3) of Pub. L. 88-272, set out as a note under section 48 of this title.

EFFECTIVE DATE

Pub. L. 87-834, §13(g), Oct. 16, 1962, 76 Stat. 1035, provided that: “The amendments made by this section [enacting this section and amending sections 167, 170, 301, 312, 341, 453, 613, and 751 of this title] (other than the amendments made by subsection (c) [amending sections 167, 179, and 642 of this title]) shall apply to taxable years beginning after December 31, 1962. The amendments made by subsection (c) shall apply to taxable years beginning after December 31, 1961, and ending after the date of the enactment of this Act [Oct. 16, 1962].”

SAVINGS PROVISION

For provisions that nothing in amendment by sections 11801 and 11813 of Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

[§§ 1246, 1247. Repealed. Pub. L. 108-357, title IV, § 413(a)(2), (3), Oct. 22, 2004, 118 Stat. 1506]

Section 1246, added Pub. L. 87-834, §14(a)(1), Oct. 16, 1962, 76 Stat. 1036; amended Pub. L. 94-455, title XIV, §1402(b)(1)(W), (2), title XIX, §§1901(a)(141), (b)(3)(I), (32)(B)(ii), 1906(b)(13)(A), title XX, §2005(a)(5), Oct. 4, 1976, 90 Stat. 1732, 1787, 1793, 1800, 1834, 1877; Pub. L. 96-223, title IV, §401(a), Apr. 2, 1980, 94 Stat. 299; Pub. L. 97-34, title VIII, §832(a), Aug. 13, 1981, 95 Stat. 355; Pub. L. 98-369, div. A, title I, §134(a), title X, §1001(b)(20), (e), July 18, 1984, 98 Stat. 668, 1012; Pub. L. 99-514, title XII, §1235(b), Oct. 22, 1986, 100 Stat. 2574; Pub. L. 100-647, title I, §§1012(p)(21), 1018(o)(2), Nov. 10, 1988, 102 Stat. 3519, 3585; Pub. L. 107-16, title V, §542(e)(5)(A), June 7, 2001, 115 Stat. 85; Pub. L. 111-312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300, related to treatment of gain on foreign investment company stock.

Section 1247, added Pub. L. 87-834, §14(a)(1), Oct. 16, 1962, 76 Stat. 1037; amended Pub. L. 94-455, title XIV, §1402(b)(1)(X), (2), title XIX, §§1901(b)(33)(P), (R), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1732, 1802, 1834; Pub. L. 98-369, div. A, title X, §1001(b)(21), (e), July 18, 1984, 98 Stat. 1012, related to election by foreign investment companies to distribute income currently.

EFFECTIVE DATE OF REPEAL

Repeal 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.

§ 1248. Gain from certain sales or exchanges of stock in certain foreign corporations

(a) General rule

If—

(1) a United States person sells or exchanges stock in a foreign corporation, and

(2) such person owns, within the meaning of section 958(a), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation at any time during the 5-year period ending on the date of the sale or exchange when such foreign corporation was a controlled foreign corporation (as defined in section 957),

then the gain recognized on the sale or exchange of such stock shall be included in the gross income of such person as a dividend, to the extent of the earnings and profits of the foreign corporation attributable (under regulations prescribed by the Secretary) to such stock which were accumulated in taxable years of such foreign corporation beginning after December 31, 1962, and during the period or periods the stock sold or exchanged was held by such person while such foreign corporation was a controlled foreign corporation. For purposes of this section, a United States person shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such person is treated as realizing gain from the sale or exchange of such stock.

(b) Limitation on tax applicable to individuals

In the case of an individual, if the stock sold or exchanged is a capital asset (within the meaning of section 1221) and has been held for more than 1 year, the tax attributable to an

amount included in gross income as a dividend under subsection (a) shall not be greater than a tax equal to the sum of—

(1) a pro rata share of the excess of—

(A) the taxes that would have been paid by the foreign corporation with respect to its income had it been taxed under this chapter as a domestic corporation (but without allowance for deduction of, or credit for, taxes described in subparagraph (B)), for the period or periods the stock sold or exchanged was held by the United States person in taxable years beginning after December 31, 1962, while the foreign corporation was a controlled foreign corporation, adjusted for distributions and amounts previously included in gross income of a United States shareholder under section 951, over

(B) the income, war profits, or excess profits taxes paid by the foreign corporation with respect to such income; and

(2) an amount equal to the tax that would result by including in gross income, as gain from the sale or exchange of a capital asset held for more than 1 year, an amount equal to the excess of (A) the amount included in gross income as a dividend under subsection (a), over (B) the amount determined under paragraph (1).

(c) Determination of earnings and profits

(1) In general

Except as provided in section 312(k)(4), for purposes of this section, the earnings and profits of any foreign corporation for any taxable year shall be determined according to rules substantially similar to those applicable to domestic corporations, under regulations prescribed by the Secretary.

(2) Earnings and profits of subsidiaries of foreign corporations

If—

(A) subsection (a) or (f) applies to a sale, exchange, or distribution by a United States person of stock of a foreign corporation and, by reason of the ownership of the stock sold or exchanged, such person owned within the meaning of section 958(a)(2) stock of any other foreign corporation; and

(B) such person owned, within the meaning of section 958(a), or was considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such other foreign corporation at any time during the 5-year period ending on the date of the sale or exchange when such other foreign corporation was a controlled foreign corporation (as defined in section 957),

then, for purposes of this section, the earnings and profits of the foreign corporation the stock of which is sold or exchanged which are attributable to the stock sold or exchanged shall be deemed to include the earnings and profits of such other foreign corporation which—

(C) are attributable (under regulations prescribed by the Secretary) to the stock of

such other foreign corporation which such person owned within the meaning of section 958(a)(2) (by reason of his ownership within the meaning of section 958(a)(1)(A) of the stock sold or exchanged) on the date of such sale or exchange (or on the date of any sale or exchange of the stock of such other foreign corporation occurring during the 5-year period ending on the date of the sale or exchange of the stock of such foreign corporation, to the extent not otherwise taken into account under this section but not in excess of the fair market value of the stock of such other foreign corporation sold or exchanged over the basis of such stock (for determining gain) in the hands of the transferor); and

(D) were accumulated in taxable years of such other corporation beginning after December 31, 1962, and during the period or periods—

(i) such other corporation was a controlled foreign corporation, and

(ii) such person owned within the meaning of section 958(a) the stock of such other foreign corporation.

(d) Exclusions from earnings and profits

For purposes of this section, the following amounts shall be excluded, with respect to any United States person, from the earnings and profits of a foreign corporation:

(1) Amounts included in gross income under section 951

Earnings and profits of the foreign corporation attributable to any amount previously included in the gross income of such person under section 951, with respect to the stock sold or exchanged, but only to the extent the inclusion of such amount did not result in an exclusion of an amount from gross income under section 959.

[(2) Repealed. Pub. L. 100-647, title I, § 1006(e)(14)(A), Nov. 10, 1988, 102 Stat. 3402]

(3) Less developed country corporations under prior law

Earnings and profits of a foreign corporation which were accumulated during any taxable year beginning before January 1, 1976, while such corporation was a less developed country corporation under section 902(d) as in effect before the enactment of the Tax Reduction Act of 1975.

(4) United States income

Any item includible in gross income of the foreign corporation under this chapter—

(A) for any taxable year beginning before January 1, 1967, as income derived from sources within the United States of a foreign corporation engaged in trade or business within the United States, or

(B) for any taxable year beginning after December 31, 1966, as income effectively connected with the conduct by such corporation of a trade or business within the United States.

This paragraph shall not apply with respect to any item which is exempt from taxation (or is

subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

(5) Foreign trade income

Earnings and profits of the foreign corporation attributable to foreign trade income of a FSC (as defined in section 922) other than foreign trade income which—

- (A) is section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6)), or
- (B) would not (but for section 923(a)(4)) be treated as exempt foreign trade income.

For purposes of the preceding sentence, the terms “foreign trade income” and “exempt foreign trade income” have the respective meanings given such terms by section 923. Any reference in this paragraph to section 922, 923, or 927 shall be treated as a reference to such section as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.

(6) Amounts included in gross income under section 1293

Earnings and profits of the foreign corporation attributable to any amount previously included in the gross income of such person under section 1293 with respect to the stock sold or exchanged, but only to the extent the inclusion of such amount did not result in an exclusion of an amount under section 1293(c).

(e) Sales or exchanges of stock in certain domestic corporations

Except as provided in regulations prescribed by the Secretary, if—

- (1) a United States person sells or exchanges stock of a domestic corporation, and
- (2) such domestic corporation was formed or availed of principally for the holding, directly or indirectly, of stock of one or more foreign corporations,

such sale or exchange shall, for purposes of this section, be treated as a sale or exchange of the stock of the foreign corporation or corporations held by the domestic corporation.

(f) Certain nonrecognition transactions

Except as provided in regulations prescribed by the Secretary—

(1) In general

If—

- (A) a domestic corporation satisfies the stock ownership requirements of subsection (a)(2) with respect to a foreign corporation, and
- (B) such domestic corporation distributes stock of such foreign corporation in a distribution to which section 311(a), 337, 355(c)(1), or 361(c)(1) applies,

then, notwithstanding any other provision of this subtitle, an amount equal to the excess of the fair market value of such stock over its adjusted basis in the hands of the domestic corporation shall be included in the gross income of the domestic corporation as a dividend to the extent of the earnings and profits of the foreign corporation attributable (under regulations prescribed by the Secretary) to such stock which were accumulated in taxable

years of such foreign corporation beginning after December 31, 1962, and during the period or periods the stock was held by such domestic corporation while such foreign corporation was a controlled foreign corporation. For purposes of subsections (c)(2), (d), and (h), a distribution of stock to which this subsection applies shall be treated as a sale of stock to which subsection (a) applies.

(2) Exception for certain distributions

In the case of any distribution of stock of a foreign corporation, paragraph (1) shall not apply if such distribution is to a domestic corporation—

- (A) which is treated under this section as holding such stock for the period for which the stock was held by the distributing corporation, and
- (B) which, immediately after the distribution, satisfies the stock ownership requirements of subsection (a)(2) with respect to such foreign corporation.

(3) Application to cases described in subsection (e)

To the extent that earnings and profits are taken into account under this subsection, they shall be excluded and not taken into account for purposes of subsection (e).

(g) Exceptions

This section shall not apply to—

- (1) distributions to which section 303 (relating to distributions in redemption of stock to pay death taxes) applies; or
- (2) any amount to the extent that such amount is, under any other provision of this title, treated as—
 - (A) a dividend (other than an amount treated as a dividend under subsection (f)),
 - (B) ordinary income, or
 - (C) gain from the sale of an asset held for not more than 1 year.

(h) Taxpayer to establish earnings and profits

Unless the taxpayer establishes the amount of the earnings and profits of the foreign corporation to be taken into account under subsection (a) or (f), all gain from the sale or exchange shall be considered a dividend under subsection (a) or (f), and unless the taxpayer establishes the amount of foreign taxes to be taken into account under subsection (b), the limitation of such subsection shall not apply.

(i) Treatment of certain indirect transfers

(1) In general

If any shareholder of a 10-percent corporate shareholder of a foreign corporation exchanges stock of the 10-percent corporate shareholder for stock of the foreign corporation, such 10-percent corporate shareholder shall recognize gain in the same manner as if the stock of the foreign corporation received in such exchange had been—

- (A) issued to the 10-percent corporate shareholder, and
- (B) then distributed by the 10-percent corporate shareholder to such shareholder in redemption or liquidation (whichever is appropriate).

The amount of gain recognized by such 10-percent corporate shareholder under the preceding sentence shall not exceed the amount treated as a dividend under this section.

(2) 10-percent corporate shareholder defined

For purposes of this subsection, the term “10-percent corporate shareholder” means any domestic corporation which, as of the day before the exchange referred to in paragraph (1), satisfies the stock ownership requirements of subsection (a)(2) with respect to the foreign corporation.

(j) Coordination with dividends received deduction

In the case of the sale or exchange by a domestic corporation of stock in a foreign corporation held for 1 year or more, any amount received by the domestic corporation which is treated as a dividend by reason of this section shall be treated as a dividend for purposes of applying section 245A.

(k) Cross reference

For provision excluding amounts previously taxed under this section from gross income when subsequently distributed, see section 959(e).

(Added Pub. L. 87-834, §15(a), Oct. 16, 1962, 76 Stat. 1041; amended Pub. L. 89-809, title I, §104(k), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 91-172, title IV, §442(b)(2), Dec. 30, 1969, 83 Stat. 628; Pub. L. 94-455, title X, §§1022(a), 1042(b), (c)(1), (3), title XIV, §1402(b)(1)(Y), (2), title XIX, §§1901(b)(3)(H), (32)(B)(iii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1619, 1636, 1637, 1732, 1793, 1800, 1834; Pub. L. 97-448, title I, §102(c)(1), Jan. 12, 1983, 96 Stat. 2370; Pub. L. 98-369, div. A, title I, §133(a), (b)(2), (c), title VIII, §801(d)(6), title X, §1001(b)(22), (e), July 18, 1984, 98 Stat. 667, 668, 996, 1012; Pub. L. 99-514, title VI, §631(d)(2), title XVIII, §§1810(i)(1), 1875(g)(1), 1876(a)(2), Oct. 22, 1986, 100 Stat. 2272, 2829, 2897; Pub. L. 100-647, title I, §§1006(e)(14), 1012(p)(19), Nov. 10, 1988, 102 Stat. 3402, 3518; Pub. L. 104-188, title I, §1702(g)(1), Aug. 20, 1996, 110 Stat. 1872; Pub. L. 108-357, title IV, §413(c)(22), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 110-172, §11(g)(17), Dec. 29, 2007, 121 Stat. 2491; Pub. L. 115-97, title I, §14102(a)(1), Dec. 22, 2017, 131 Stat. 2192.)

REFERENCES IN TEXT

Section 902(d) as in effect before the enactment of the Tax Reduction Act of 1975, referred to in subsec. (d)(3), means section 902(d) of this title as in effect before the amendment made by Pub. L. 94-12, title VI, §602(c)(6), Mar. 29, 1975, 89 Stat. 59. Section 902 was subsequently amended generally by Pub. L. 99-514, title XII, §1202(a), Oct. 22, 1986, 100 Stat. 2528, and repealed by Pub. L. 115-97, title I, §14301(a), Dec. 22, 2017, 131 Stat. 2221.

The FSC Repeal and Extraterritorial Income Exclusion Act of 2000, referred to in subsec. (d)(5), is Pub. L. 106-519, Nov. 15, 2000, 114 Stat. 2423. For complete classification of this Act to the Code, see Short Title of 2000 Amendments note set out under section 1 of this title and Tables.

AMENDMENTS

2017—Subsecs. (j), (k). Pub. L. 115-97 added subsec. (j) and redesignated former subsec. (j) as (k).

2007—Subsec. (d)(5). Pub. L. 110-172 inserted “(as defined in section 922)” after “a FSC” in introductory provisions and inserted second sentence in concluding provisions.

2004—Subsec. (d)(5) to (7). Pub. L. 108-357 redesignated pars. (6) and (7) as (5) and (6), respectively, and struck out heading and text of former par. (5). Text read as follows: “If the United States person whose stock is sold or exchanged was a qualified shareholder (as defined in section 1247(c)) of a foreign corporation which was a foreign investment company (as described in section 1246(b)(1)), the earnings and profits of the foreign corporation for taxable years in which such person was a qualified shareholder.”

1996—Subsec. (a). Pub. L. 104-188, §1702(g)(1)(A)(ii), in closing provisions inserted at end “For purposes of this section, a United States person shall be treated as having sold or exchanged any stock if, under any provision of this subtitle, such person is treated as realizing gain from the sale or exchange of such stock.”

Subsec. (a)(1). Pub. L. 104-188, §1702(g)(1)(A)(i), struck out “, or if a United States person receives a distribution from a foreign corporation which, under section 302 or 331, is treated as an exchange of stock” after “in a foreign corporation”.

Subsec. (e)(1). Pub. L. 104-188, §1702(g)(1)(B), struck out “, or receives a distribution from a domestic corporation which, under section 302 or 331, is treated as an exchange of stock” after “of a domestic corporation”.

Subsec. (f)(1)(B). Pub. L. 104-188, §1702(g)(1)(C), substituted “355(c)(1), or 361(c)(1)” for “or 361(c)(1)”.

Subsec. (i)(1). Pub. L. 104-188, §1702(g)(1)(D), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “If any shareholder of a 10-percent corporate shareholder of a foreign corporation exchanges stock of the 10-percent corporate shareholder for stock of the foreign corporation, for purposes of this section, the stock of the foreign corporation received in such exchange shall be treated as if it had been—

“(A) issued to the 10-percent corporate shareholder, and

“(B) then distributed by the 10-percent corporate shareholder to such shareholder in redemption or liquidation (whichever is appropriate).”

1988—Subsec. (d)(2). Pub. L. 100-647, §1006(e)(14)(A), struck out par. (2) which related to gain realized from sale or exchange of property in pursuance of plan of complete liquidation.

Subsec. (d)(7). Pub. L. 100-647, §1012(p)(19), added par. (7).

Subsec. (f). Pub. L. 100-647, §1006(e)(14)(E), substituted “nonrecognition” for “section 311, 336, or 337” in heading.

Subsec. (f)(1). Pub. L. 100-647, §1006(e)(14)(C), struck out “, sale, or exchange” after “(h), a distribution” in last sentence.

Subsec. (f)(1)(B). Pub. L. 100-647, §1006(e)(14)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “such domestic corporation distributes, sells, or exchanges stock of such foreign corporation in a transaction to which section 311, 336, or 337 applies.”

Subsec. (f)(3), (4). Pub. L. 100-647, §1006(e)(14)(D), redesignated par. (4) as (3) and struck out former par. (3) which related to nonapplication of paragraph (1) in certain cases.

1986—Subsec. (d)(6). Pub. L. 99-514, §1876(a)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “Earnings and profits of the foreign corporation attributable to foreign trade income (within the meaning of section 923(b)) of a FSC.”

Subsec. (e). Pub. L. 99-514, §631(d)(2)(A), substituted “Except as provided in regulations” for “Under regulations”.

Subsec. (f). Pub. L. 99-514, §631(d)(2)(B), inserted “Except as provided in regulations prescribed by the Secretary—” after heading.

Subsec. (g). Pub. L. 99-514, §1875(g)(1), inserted “or” at end of par. (1), redesignated par. (3) as (2), and struck out former par. (2) which read as follows: “gain realized on exchanges to which section 356 (relating to receipt of additional consideration in certain reorganizations) applies; or”.

Subsec. (i)(1)(B). Pub. L. 99-514, §1810(i)(1), substituted “in redemption or liquidation (whichever is appropriate)” for “in redemption of his stock”.

1984—Subsec. (b). Pub. L. 98-369, §1001(b)(22), (e), substituted “6 months” for “1 year”, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (c)(2)(D). Pub. L. 98-369, §133(c), substituted “section 958(a)” for “section 958(a)(2)”.

Subsec. (d)(6). Pub. L. 98-369, §801(d)(6), added par. (6).

Subsec. (g)(3)(C). Pub. L. 98-369, §1001(b)(22), (e), substituted “6 months” for “1 year”, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (i). Pub. L. 98-369, §133(a), added subsec. (i).

Subsec. (j). Pub. L. 98-369, §133(b)(2), added subsec. (j). 1983—Subsec. (c)(1). Pub. L. 97-448 substituted “section 312(k)(4)” for “section 312(k)(3)”.

1976—Subsec. (a). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (b). Pub. L. 94-455, §1402(b)(2), provided that “9 months” would be changed to “1 year”.

Pub. L. 94-455, §1402(b)(1)(Y), provided that “6 months” would be changed to “9 months” for taxable years beginning in 1977.

Subsec. (c)(1). Pub. L. 94-455, §§1901(b)(32)(B)(iii), 1906(b)(13)(A), substituted “section 312(k)” for “section 312(m)(3)”, and struck out “or his delegate” after “Secretary”.

Subsec. (c)(2)(A). Pub. L. 94-455, §1042(c)(3)(A), substituted “subsection (a) or (f) applies to a sale, exchange, or distribution” for “subsection (a) applies to a sale or exchange”.

Subsec. (c)(2)(C). Pub. L. 94-455, §1042(b), inserted “(or on the date of any sale or exchange of the stock of such other foreign corporation occurring during the 5-year period ending on the date of the sale or exchange of the stock of such foreign corporation, to the extent not otherwise taken into account under this section but not in excess of the fair market value of the stock of such other foreign corporation sold or exchanged over the basis of such stock (for determining gain) in the hands of the transferor)”. §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (d)(2). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (d)(3). Pub. L. 94-455, §1022(a), substituted provisions of par. (3) relating to “Less developed country corporations under prior law” and reading “Earnings and profits of a foreign corporation which were accumulated during any taxable year beginning before January 1, 1976, while such corporation was a less developed country corporation under section 902(d) as in effect before the enactment of the Tax Reduction Act of 1975” for prior par. (3) relating to “Less developed country corporations” and reading “Earnings and profits accumulated by a foreign corporation while it was a less developed country corporation (as defined in section 902(d)), if the stock sold or exchanged was owned for a continuous period of at least 10 years, ending with the date of the sale or exchange, by the United States person who sold or exchanged such stock. In the case of stock sold or exchanged by a corporation, if United States persons who are individuals, estates, or trusts (each of whom owned within the meaning of section 958(a), or were considered as owning by applying the rules of ownership of section 958(b), 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such corporation) owned, or were considered as owning, at any time during the 10-year period ending on the date of the sale or exchange more than 50 percent of the total combined voting power of all classes of stock entitled to vote such corporation, this paragraph shall apply only if such United States persons owned, or were considered as owning, at all times during the remainder of such 10-year period more than 50 percent of the total combined voting power of all classes of stock entitled to vote of such corporation. For purposes of this paragraph, stock owned by a United States person who is an individual,

estate, or trust which was acquired by reason of the death of the predecessor in interest of such United States person shall be considered as owned by such United States person during the period such stock was owned by such predecessor in interest, and during the period such stock was owned by any other predecessor in interest if between such United States person and such other predecessor in interest there was no transfer other than by reason of the death of an individual.”

Subsec. (e). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (f). Pub. L. 94-455, §1042(c)(1), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 94-455, §§1042(c)(1), (3)(B), 1901(b)(3)(H), redesignated former subsec. (f) as (g); inserted “(other than an amount treated as a dividend under subsection (f))” in par. (3)(A); and substituted in par. (3)(B) “ordinary income” for “gain from the sale of an asset which is not a capital asset”, respectively. Former subsec. (g) redesignated (h).

Subsec. (g)(3)(C). Pub. L. 94-455, §1402(b)(2), provided that “9 months” would be changed to “1 year”.

Pub. L. 94-455, §1402(b)(1)(Y), provided that “6 months” would be changed to “9 months” for taxable years beginning in 1977.

Subsec. (h). Pub. L. 94-455, §1042(c)(1), (3)(C), redesignated former subsec. (g) as (h) and inserted reference to subsec. (f) in two places.

1969—Subsec. (c)(1). Pub. L. 91-172 inserted reference to the exception provided for in section 312(m)(3).

1966—Subsec. (d)(4). Pub. L. 89-809 provided that for taxable years beginning after December 31, 1966, the earnings and profits of the foreign corporation, for purposes of this section, is not to include income effectively connected with the conduct of a trade or business within the United States, and inserted provision that the exclusion does not apply to income which is exempt from tax or subject to a reduced rate of tax pursuant to a treaty.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-97, title I, §14102(a)(2), Dec. 22, 2017, 131 Stat. 2192, provided that: “The amendments made by this subsection [amending this section] shall apply to sales or exchanges after December 31, 2017.”

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 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 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 631(d)(2) of Pub. L. 99-514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with ex-

ceptions and special and transitional rules, see section 633 of Pub. L. 99-514, set out as an Effective Date note under section 336 of this title.

Pub. L. 99-514, title XVIII, §1875(g)(2), Oct. 22, 1986, 100 Stat. 2897, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to exchanges after March 1, 1986.”

Amendment by sections 1810(i)(1) and 1876(a)(2) 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, §133(d)(1), July 18, 1984, 98 Stat. 668, provided that: “The amendment made by subsection (a) [amending this section] shall apply to exchanges after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.”

Amendment by section 133(b)(2), (c) of Pub. L. 98-369 applicable with respect to transactions to which subsec. (a) or (f) of this section applies occurring after July 18, 1984, with election of earlier date for certain transactions, see section 133(d)(2), (3) of Pub. L. 98-369, set out as a note under section 959 of this title.

Amendment by section 801(d)(6) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, as amended, set out as a note under section 245 of this title.

Amendment by section 1001(b)(22) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title X, §1022(b), Oct. 4, 1976, 90 Stat. 1619, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1975.”

For effective date of amendment by section 1042 of Pub. L. 94-455, see section 1042(e) of Pub. L. 94-455, set out as a note under section 367 of this title.

Pub. L. 94-455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94-455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Amendment by section 1901(b)(3)(H), (32)(B)(iii) of 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 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to sales or exchanges occurring after Dec. 31, 1966, see section 104(n) of Pub. L. 89-809, set out as a note under section 11 of this title.

EFFECTIVE DATE

Pub. L. 87-834, §15(c), Oct. 16, 1962, 76 Stat. 1044, provided that: “The amendments made by this section [enacting this section] shall apply with respect to sales or exchanges occurring after December 31, 1962.”

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.

TRANSITIONAL RULE

Pub. L. 99-514, title XVIII, §1875(g)(3), Oct. 22, 1986, 100 Stat. 2897, provided that: “An exchange shall be treated as occurring on or before March 1, 1986, if—

“(A) on or before such date, the taxpayer adopts a plan of reorganization to which section 356 [of the Internal Revenue Code of 1986] applies, and

“(B) such plan or reorganization is implemented and distributions pursuant to such plan are completed on or before the date of enactment of this Act [Oct. 22, 1986].”

§ 1249. Gain from certain sales or exchanges of patents, etc., to foreign corporations

(a) General rule

Gain from the sale or exchange of a patent, an invention, model, or design (whether or not patented), a copyright, a secret formula or process, or any other similar property right to any foreign corporation by any United States person (as defined in section 7701(a)(30)) which controls such foreign corporation shall, if such gain would (but for the provisions of this subsection) be gain from the sale or exchange of a capital asset or of property described in section 1231, be considered as ordinary income.

(b) Control

For purposes of subsection (a), control means, with respect to any foreign corporation, 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 subsection, the rules for determining ownership of stock prescribed by section 958 shall apply.

(Added Pub. L. 87-834, §16(a), Oct. 16, 1962, 76 Stat. 1045; amended Pub. L. 89-809, title I, §104(m)(3), Nov. 13, 1966, 80 Stat. 1563; Pub. L. 94-455, title XIX, §1901(b)(3)(K), Oct. 4, 1976, 90 Stat. 1793; Pub. L. 113-295, div. A, title II, §221(a)(84), Dec. 19, 2014, 128 Stat. 4049.)

AMENDMENTS

2014—Subsec. (a). Pub. L. 113-295 struck out “after December 31, 1962,” before “of a patent”.

1976—Subsec. (a). Pub. L. 94-455 substituted “ordinary income” for “gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231”.

1966—Subsec. (a). Pub. L. 89-809 substituted “Gain” for “Except as provided in subsection (c), gain”.

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 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 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see sec-