

**§ 267A. Certain related party amounts paid or accrued in hybrid transactions or with hybrid entities**

**(a) In general**

No deduction shall be allowed under this chapter for any disqualified related party amount paid or accrued pursuant to a hybrid transaction or by, or to, a hybrid entity.

**(b) Disqualified related party amount**

For purposes of this section—

**(1) Disqualified related party amount**

The term “disqualified related party amount” means any interest or royalty paid or accrued to a related party to the extent that—

(A) such amount is not included in the income of such related party under the tax law of the country of which such related party is a resident for tax purposes or is subject to tax, or

(B) such related party is allowed a deduction with respect to such amount under the tax law of such country.

Such term shall not include any payment to the extent such payment is included in the gross income of a United States shareholder under section 951(a).

**(2) Related party**

The term “related party” means a related person as defined in section 954(d)(3), except that such section shall be applied with respect to the person making the payment described in paragraph (1) in lieu of the controlled foreign corporation otherwise referred to in such section.

**(c) Hybrid transaction**

For purposes of this section, the term “hybrid transaction” means any transaction, series of transactions, agreement, or instrument one or more payments with respect to which are treated as interest or royalties for purposes of this chapter and which are not so treated for purposes the tax law of the foreign country of which the recipient of such payment is resident for tax purposes or is subject to tax.

**(d) Hybrid entity**

For purposes of this section, the term “hybrid entity” means any entity which is either—

(1) treated as fiscally transparent for purposes of this chapter but not so treated for purposes of the tax law of the foreign country of which the entity is resident for tax purposes or is subject to tax, or

(2) treated as fiscally transparent for purposes of such tax law but not so treated for purposes of this chapter.

**(e) Regulations**

The Secretary shall issue such regulations or other guidance as may be necessary or appropriate to carry out the purposes of this section, including regulations or other guidance providing for—

(1) rules for treating certain conduit arrangements which involve a hybrid transaction or a hybrid entity as subject to subsection (a),

(2) rules for the application of this section to branches or domestic entities,

(3) rules for treating certain structured transactions as subject to subsection (a),

(4) rules for treating a tax preference as an exclusion from income for purposes of applying subsection (b)(1) if such tax preference has the effect of reducing the generally applicable statutory rate by 25 percent or more,

(5) rules for treating the entire amount of interest or royalty paid or accrued to a related party as a disqualified related party amount if such amount is subject to a participation exemption system or other system which provides for the exclusion or deduction of a substantial portion of such amount,

(6) rules for determining the tax residence of a foreign entity if the entity is otherwise considered a resident of more than one country or of no country,

(7) exceptions from subsection (a) with respect to—

(A) cases in which the disqualified related party amount is taxed under the laws of a foreign country other than the country of which the related party is a resident for tax purposes, and

(B) other cases which the Secretary determines do not present a risk of eroding the Federal tax base,<sup>1</sup>

(8) requirements for record keeping and information reporting in addition to any requirements imposed by section 6038A.

(Added Pub. L. 115-97, title I, § 14222(a), Dec. 22, 2017, 131 Stat. 2219.)

EFFECTIVE DATE

Pub. L. 115-97, title I, § 14222(c), Dec. 22, 2017, 131 Stat. 2220, provided that: “The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 2017.”

**§ 268. Sale of land with unharvested crop**

Where an unharvested crop sold by the taxpayer is considered under the provisions of section 1231 as “property used in the trade or business”, in computing taxable income no deduction (whether or not for the taxable year of the sale and whether for expenses, depreciation, or otherwise) attributable to the production of such crop shall be allowed.

(Aug. 16, 1954, ch. 736, 68A Stat. 80.)

**§ 269. Acquisitions made to evade or avoid income tax**

**(a) In general**

If—

(1) any person or persons acquire, directly or indirectly, control of a corporation, or

(2) any corporation acquires, directly or indirectly, property of another corporation, not controlled, directly or indirectly, immediately before such acquisition, by such acquiring corporation or its stockholders, the basis of which property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation,

<sup>1</sup> So in original. Probably should be followed by “and”.

and the principal purpose for which such acquisition was made is evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which such person or corporation would not otherwise enjoy, then the Secretary may disallow such deduction, credit, or other allowance. For purposes of paragraphs (1) and (2), control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of the corporation.

**(b) Certain liquidations after qualified stock purchases**

**(1) In general**

If—

(A) there is a qualified stock purchase by a corporation of another corporation,

(B) an election is not made under section 338 with respect to such purchase,

(C) the acquired corporation is liquidated pursuant to a plan of liquidation adopted not more than 2 years after the acquisition date, and

(D) the principal purpose for such liquidation is the evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which the acquiring corporation would not otherwise enjoy,

then the Secretary may disallow such deduction, credit, or other allowance.

**(2) Meaning of terms**

For purposes of paragraph (1), the terms “qualified stock purchase” and “acquisition date” have the same respective meanings as when used in section 338.

**(c) Power of Secretary to allow deduction, etc., in part**

In any case to which subsection (a) or (b) applies the Secretary is authorized—

(1) to allow as a deduction, credit, or allowance any part of any amount disallowed by such subsection, if he determines that such allowance will not result in the evasion or avoidance of Federal income tax for which the acquisition was made; or

(2) to distribute, apportion, or allocate gross income, and distribute, apportion, or allocate the deductions, credits, or allowances the benefit of which was sought to be secured, between or among the corporations, or properties, or parts thereof, involved, and to allow such deductions, credits, or allowances so distributed, apportioned, or allocated, but to give effect to such allowance only to such extent as he determines will not result in the evasion or avoidance of Federal income tax for which the acquisition was made; or

(3) to exercise his powers in part under paragraph (1) and in part under paragraph (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 80; Pub. L. 88-272, title II, § 235(c)(2), Feb. 26, 1964, 78 Stat. 126; Pub. L. 94-455, title XIX, §§ 1901(a)(38), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1771, 1834; Pub. L. 98-369, div. A, title VII, § 712(k)(8)(A), (B), July 18, 1984, 98 Stat. 952; Pub. L. 113-295, div. A, title II, § 221(a)(45), Dec. 19, 2014, 128 Stat. 4045.)

AMENDMENTS

2014—Subsec. (a). Pub. L. 113-295 struck out “or acquired on or after October 8, 1940,” after “persons acquire,” in par. (1) and after “corporation acquires,” in par. (2).

1984—Subsecs. (b), (c). Pub. L. 98-369 added subsec. (b), redesignated former subsec. (b) as (c) and inserted reference to subsec. (b).

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

Subsec. (c). Pub. L. 94-455, § 1901(a)(38), struck out subsec. (c) relating to presumptions in the case of disproportionate purchase price.

1964—Subsec. (a). Pub. L. 88-272 substituted “the Secretary or his delegate may disallow such deduction, credit, or other allowance” for “such deduction, credit or other allowance shall not be allowed”.

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 1984 AMENDMENT

Pub. L. 98-369, div. A, title VII, § 712(k)(8)(C), July 18, 1984, 98 Stat. 952, provided that: “The amendments made by this paragraph [amending this section] shall apply to liquidations after October 20, 1983, in taxable years ending after such date.”

EFFECTIVE DATE OF 1964 AMENDMENT

Pub. L. 88-272, title II, § 235(d), Feb. 26, 1964, 78 Stat. 127, provided that: “The amendments made by subsections (a) and (c) [enacting sections 1561 to 1563 of this title and amending this section and sections 441 and 802 of this title] shall apply with respect to taxable years ending after December 31, 1963. The amendment made by subsection (b) [amending section 1551 of this title] shall apply with respect to transfers made after June 12, 1963.”

**§ 269A. Personal service corporations formed or availed of to avoid or evade income tax**

**(a) General rule**

If—

(1) substantially all of the services of a personal service corporation are performed for (or on behalf of) 1 other corporation, partnership, or other entity, and

(2) the principal purpose for forming, or availing of, such personal service corporation is the avoidance or evasion of Federal income tax by reducing the income of, or securing the benefit of any expense, deduction, credit, exclusion, or other allowance for, any employee-owner which would not otherwise be available,

then the Secretary may allocate all income, deductions, credits, exclusions, and other allowances between such personal service corporation and its employee-owners, if such allocation is necessary to prevent avoidance or evasion of Federal income tax or clearly to reflect the income of the personal service corporation or any of its employee-owners.

**(b) Definitions**

For purposes of this section—

**(1) Personal service corporation**

The term “personal service corporation” means a corporation the principal activity of which is the performance of personal services and such services are substantially performed by employee-owners.