

§ 245A. Deduction for foreign source-portion of dividends received by domestic corporations from specified 10-percent owned foreign corporations

(a) In general

In the case of any dividend received from a specified 10-percent owned foreign corporation by a domestic corporation which is a United States shareholder with respect to such foreign corporation, there shall be allowed as a deduction an amount equal to the foreign-source portion of such dividend.

(b) Specified 10-percent owned foreign corporation

For purposes of this section—

(1) In general

The term “specified 10-percent owned foreign corporation” means any foreign corporation with respect to which any domestic corporation is a United States shareholder with respect to such corporation.

(2) Exclusion of passive foreign investment companies

Such term shall not include any corporation which is a passive foreign investment company (as defined in section 1297) with respect to the shareholder and which is not a controlled foreign corporation.

(c) Foreign-source portion

For purposes of this section—

(1) In general

The foreign-source portion of any dividend from a specified 10-percent owned foreign corporation is an amount which bears the same ratio to such dividend as—

(A) the undistributed foreign earnings of the specified 10-percent owned foreign corporation, bears to

(B) the total undistributed earnings of such foreign corporation.

(2) Undistributed earnings

The term “undistributed earnings” means the amount of the earnings and profits of the specified 10-percent owned foreign corporation (computed in accordance with sections 964(a) and 986)—

(A) as of the close of the taxable year of the specified 10-percent owned foreign corporation in which the dividend is distributed, and

(B) without diminution by reason of dividends distributed during such taxable year.

(3) Undistributed foreign earnings

The term “undistributed foreign earnings” means the portion of the undistributed earnings which is attributable to neither—

(A) income described in subparagraph (A) of section 245(a)(5), nor

(B) dividends described in subparagraph (B) of such section (determined without regard to section 245(a)(12)).

(d) Disallowance of foreign tax credit, etc.

(1) In general

No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as

paid or accrued) with respect to any dividend for which a deduction is allowed under this section.

(2) Denial of deduction

No deduction shall be allowed under this chapter for any tax for which credit is not allowable under section 901 by reason of paragraph (1) (determined by treating the taxpayer as having elected the benefits of subpart A of part III of subchapter N).

(e) Special rules for hybrid dividends

(1) In general

Subsection (a) shall not apply to any dividend received by a United States shareholder from a controlled foreign corporation if the dividend is a hybrid dividend.

(2) Hybrid dividends of tiered corporations

If a controlled foreign corporation with respect to which a domestic corporation is a United States shareholder receives a hybrid dividend from any other controlled foreign corporation with respect to which such domestic corporation is also a United States shareholder, then, notwithstanding any other provision of this title—

(A) the hybrid dividend shall be treated for purposes of section 951(a)(1)(A) as subpart F income of the receiving controlled foreign corporation for the taxable year of the controlled foreign corporation in which the dividend was received, and

(B) the United States shareholder shall include in gross income an amount equal to the shareholder's pro rata share (determined in the same manner as under section 951(a)(2)) of the subpart F income described in subparagraph (A).

(3) Denial of foreign tax credit, etc.

The rules of subsection (d) shall apply to any hybrid dividend received by, or any amount included under paragraph (2) in the gross income of, a United States shareholder.

(4) Hybrid dividend

The term “hybrid dividend” means an amount received from a controlled foreign corporation—

(A) for which a deduction would be allowed under subsection (a) but for this subsection, and

(B) for which the controlled foreign corporation received a deduction (or other tax benefit) with respect to any income, war profits, or excess profits taxes imposed by any foreign country or possession of the United States.

(f) Special rule for purging distributions of passive foreign investment companies

Any amount which is treated as a dividend under section 1291(d)(2)(B) shall not be treated as a dividend for purposes of this section.

(g) Regulations

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this section, including regulations for the treatment of United States shareholders owning stock of a

specified 10 percent¹ owned foreign corporation through a partnership.

(Added Pub. L. 115-97, title I, §14101(a), Dec. 22, 2017, 131 Stat. 2189.)

EFFECTIVE DATE

Pub. L. 115-97, title I, §14101(f), Dec. 22, 2017, 131 Stat. 2192, provided that: “The amendments made by this section [enacting this section and amending sections 246, 904, 951, 957, and 1059 of this title] shall apply to distributions made after (and, in the case of the amendments made by subsection (d) [amending section 904 of this title], deductions with respect to taxable years ending after) December 31, 2017.”

§ 246. Rules applying to deductions for dividends received

(a) Deduction not allowed for dividends from certain corporations

(1) In general

The deductions allowed by sections 243¹ 245, and 245A shall not apply to any dividend from a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations).

(2) Subsection not to apply to certain dividends of Federal Home Loan Banks

(A) Dividends out of current earnings and profits

In the case of any dividend paid by any FHLB out of earnings and profits of the FHLB for the taxable year in which such dividend was paid, paragraph (1) shall not apply to that portion of such dividend which bears the same ratio to the total dividend as—

- (i) the dividends received by the FHLB from the FHLMC during such taxable year, bears to
- (ii) the total earnings and profits of the FHLB for such taxable year.

(B) Dividends out of accumulated earnings and profits

In the case of any dividend which is paid out of any accumulated earnings and profits of any FHLB, paragraph (1) shall not apply to that portion of the dividend which bears the same ratio to the total dividend as—

- (i) the amount of dividends received by such FHLB from the FHLMC which are out of earnings and profits of the FHLMC—

(I) for taxable years ending after December 31, 1984, and

(II) which were not previously treated as distributed under subparagraph (A) or this subparagraph, bears to

- (ii) the total accumulated earnings and profits of the FHLB as of the time such dividend is paid.

For purposes of clause (ii), the accumulated earnings and profits of the FHLB as of Janu-

ary 1, 1985, shall be treated as equal to its retained earnings as of such date.

(C) Coordination with section 243

To the extent that paragraph (1) does not apply to any dividend by reason of subparagraph (A) or (B) of this paragraph, the requirement contained in section 243(a) that the corporation paying the dividend be subject to taxation under this chapter shall not apply.

(D) Definitions

For purposes of this paragraph—

(i) FHLB

The term “FHLB” means any Federal Home Loan Bank.

(ii) FHLMC

The term “FHLMC” means the Federal Home Loan Mortgage Corporation.

(iii) Taxable year of FHLB

The taxable year of an FHLB shall, except as provided in regulations prescribed by the Secretary, be treated as the calendar year.

(iv) Earnings and profits

The earnings and profits of any FHLB for any taxable year shall be treated as equal to the sum of—

(I) any dividends received by the FHLB from the FHLMC during such taxable year, and

(II) the total earnings and profits (determined without regard to dividends described in subclause (I)) of the FHLB as reported in its annual financial statement prepared in accordance with section 20 of the Federal Home Loan Bank Act (12 U.S.C. 1440).

(b) Limitation on aggregate amount of deductions

(1) General rule

Except as provided in paragraph (2), the aggregate amount of the deductions allowed by section 243(a)(1), subsection² (a) and² (b) of section 245, and section 250 shall not exceed the percentage determined under paragraph (3) of the taxable income computed without regard to the deductions allowed by sections 172, 199A, 243(a)(1), subsection² (a) and² (b) of section 245, and 250, without regard to any adjustment under section 1059, and without regard to any capital loss carryback to the taxable year under section 1212(a)(1).

(2) Effect of net operating loss

Paragraph (1) shall not apply for any taxable year for which there is a net operating loss (as determined under section 172).

(3) Special rules

The provisions of paragraph (1) shall be applied—

- (A) first separately with respect to dividends from 20-percent owned corporations (as defined in section 243(c)(2)) and the percentage determined under this paragraph shall be 65 percent, and

¹ So in original. Probably should be “10-percent”.

¹ So in original. Probably should be followed by a comma.

² So in original.