

foreign corporation any pro rata amount from which is taken into account in determining the global intangible low-taxed income included in gross income of a United States shareholder under subsection (a), the portion of such global intangible low-taxed income which is treated as being with respect to such controlled foreign corporation is—

(A) in the case of a controlled foreign corporation with no tested income, zero, and

(B) in the case of a controlled foreign corporation with tested income, the portion of such global intangible low-taxed income which bears the same ratio to such global intangible low-taxed income as—

(i) such United States shareholder's pro rata amount of the tested income of such controlled foreign corporation, bears to

(ii) the aggregate amount described in subsection (c)(1)(A) with respect to such United States shareholder.

(Added Pub. L. 115-97, title I, §14201(a), Dec. 22, 2017, 131 Stat. 2208.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (d)(3), is the date of the enactment of Pub. L. 115-97, which was approved Dec. 22, 2017.

EFFECTIVE DATE

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14201(d) of Pub. L. 115-97, set out as an Effective Date of 2017 Amendment note under section 904 of this title.

§ 952. Subpart F income defined

(a) In general

For purposes of this subpart, the term “subpart F income” means, in the case of any controlled foreign corporation, the sum of—

(1) insurance income (as defined under section 953),

(2) the foreign base company income (as determined under section 954),

(3) an amount equal to the product of—

(A) the income of such corporation other than income which—

(i) is attributable to earnings and profits of the foreign corporation included in the gross income of a United States person under section 951 (other than by reason of this paragraph), or

(ii) is described in subsection (b),

multiplied by

(B) the international boycott factor (as determined under section 999),

(4) the sum of the amounts of any illegal bribes, kickbacks, or other payments (within the meaning of section 162(c)) paid by or on behalf of the corporation during the taxable year of the corporation directly or indirectly to an official, employee, or agent in fact of a government, and

(5) the income of such corporation derived from any foreign country during any period during which section 901(j) applies to such foreign country.

The payments referred to in paragraph (4) are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person. For purposes of paragraph (5), the income described therein shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income.

(b) Exclusion of United States income

In the case of a controlled foreign corporation, subpart F income does not include any item of income from sources within the United States which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States. For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account.

(c) Limitation

(1) In general

(A) Subpart F income limited to current earnings and profits

For purposes of subsection (a), the subpart F income of any controlled foreign corporation for any taxable year shall not exceed the earnings and profits of such corporation for such taxable year.

(B) Certain prior year deficits may be taken into account

(i) In general

The amount included in the gross income of any United States shareholder under section 951(a)(1)(A) for any taxable year and attributable to a qualified activity shall be reduced by the amount of such shareholder's pro rata share of any qualified deficit.

(ii) Qualified deficit

The term “qualified deficit” means any deficit in earnings and profits of the controlled foreign corporation for any prior taxable year which began after December 31, 1986, and for which the controlled foreign corporation was a controlled foreign corporation; but only to the extent such deficit—

(I) is attributable to the same qualified activity as the activity giving rise to the income being offset, and

(II) has not previously been taken into account under this subparagraph.

In determining the deficit attributable to qualified activities described in subclause (II) or (III) of clause (iii),¹ deficits in earnings and profits (to the extent not previously taken into account under this section) for taxable years beginning after 1962 and before 1987 also shall be taken into account. In the case of the qualified activity described in clause (iii)(I),¹ the rule of the

¹ See References in Text note below.

preceding sentence shall apply, except that “1982” shall be substituted for “1962”.

(iii) Qualified activity

For purposes of this paragraph, the term “qualified activity” means any activity giving rise to—

- (I) foreign base company sales income,
- (II) foreign base company services income,
- (III) in the case of a qualified insurance company, insurance income or foreign personal holding company income, or
- (IV) in the case of a qualified financial institution, foreign personal holding company income.

(iv) Pro rata share

For purposes of this paragraph, the shareholder’s pro rata share of any deficit for any prior taxable year shall be determined under rules similar to rules under section 951(a)(2) for whichever of the following yields the smaller share:

- (I) the close of the taxable year, or
- (II) the close of the taxable year in which the deficit arose.

(v) Qualified insurance company

For purposes of this subparagraph, the term “qualified insurance company” means any controlled foreign corporation predominantly engaged in the active conduct of an insurance business in the taxable year and in the prior taxable years in which the deficit arose.

(vi) Qualified financial institution

For purposes of this paragraph, the term “qualified financial institution” means any controlled foreign corporation predominantly engaged in the active conduct of a banking, financing, or similar business in the taxable year and in the prior taxable year in which the deficit arose.

(vii) Special rules for insurance income

(I) In general

An election may be made under this clause to have section 953(a) applied for purposes of this title without regard to the same country exception under paragraph (1)(A) thereof. Such election, once made, may be revoked only with the consent of the Secretary.

(II) Special rules for affiliated groups

In the case of an affiliated group of corporations (within the meaning of section 1504 but without regard to section 1504(b)(3) and by substituting “more than 50 percent” for “at least 80 percent” each place it appears), no election may be made under subclause (I) for any controlled foreign corporation unless such election is made for all other controlled foreign corporations who are members of such group and who were created or organized under the laws of the same country as such controlled foreign corporation. For purposes of clause (v), in determining whether any controlled corpora-

tion described in the preceding sentence is a qualified insurance company, all such corporations shall be treated as 1 corporation.

(C) Certain deficits of member of the same chain of corporations may be taken into account

(i) In general

A controlled foreign corporation may elect to reduce the amount of its subpart F income for any taxable year which is attributable to any qualified activity by the amount of any deficit in earnings and profits of a qualified chain member for a taxable year ending with (or within) the taxable year of such controlled foreign corporation to the extent such deficit is attributable to such activity. To the extent any deficit reduces subpart F income under the preceding sentence, such deficit shall not be taken into account under subparagraph (B).

(ii) Qualified chain member

For purposes of this subparagraph, the term “qualified chain member” means, with respect to any controlled foreign corporation, any other corporation which is created or organized under the laws of the same foreign country as the controlled foreign corporation but only if—

- (I) all the stock of such other corporation (other than directors’ qualifying shares) is owned at all times during the taxable year in which the deficit arose (directly or through 1 or more corporations other than the common parent) by such controlled foreign corporation, or
- (II) all the stock of such controlled foreign corporation (other than directors’ qualifying shares) is owned at all times during the taxable year in which the deficit arose (directly or through 1 or more corporations other than the common parent) by such other corporation.

(iii) Coordination

This subparagraph shall be applied after subparagraphs (A) and (B).

(2) Recharacterization in subsequent taxable years

If the subpart F income of any controlled foreign corporation for any taxable year was reduced by reason of paragraph (1)(A), any excess of the earnings and profits of such corporation for any subsequent taxable year over the subpart F income of such foreign corporation for such taxable year shall be recharacterized as subpart F income under rules similar to the rules applicable under section 904(f)(5).

(3) Special rule for determining earnings and profits

For purposes of this subsection, earnings and profits of any controlled foreign corporation shall be determined without regard to paragraphs (4), (5), and (6) of section 312(n). Under regulations, the preceding sentence shall not apply to the extent it would increase earnings

and profits by an amount which was previously distributed by the controlled foreign corporation.

(d) Income derived from foreign country

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subsection (a)(5), including regulations which treat income paid through 1 or more entities as derived from a foreign country to which section 901(j) applies if such income was, without regard to such entities, derived from such country.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1008; amended Pub. L. 89-809, title I, §104(j), Nov. 13, 1966, 80 Stat. 1562; Pub. L. 94-455, title X, §§1062, 1065(a)(1), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1650, 1653, 1834; Pub. L. 97-248, title II, §288(b)(1), Sept. 3, 1982, 96 Stat. 571; Pub. L. 99-509, title VIII, §8041(b), Oct. 21, 1986, 100 Stat. 1963; Pub. L. 99-514, title XII, §1221(b)(3)(A), (f), title XVIII, §1876(c)(1), Oct. 22, 1986, 100 Stat. 2552, 2554, 2898; Pub. L. 100-647, title I, §1012(i)(16), (22)-(25)(A), title VI, §6131(a), Nov. 10, 1988, 102 Stat. 3510-3512, 3720; Pub. L. 105-34, title XI, §1112(c)(1), Aug. 5, 1997, 111 Stat. 969; Pub. L. 108-357, title IV, §415(c)(1), Oct. 22, 2004, 118 Stat. 1511; Pub. L. 109-135, title IV, §412(kk), Dec. 21, 2005, 119 Stat. 2639; Pub. L. 110-172, §11(g)(14), Dec. 29, 2007, 121 Stat. 2490; Pub. L. 115-97, title I, §§14211(b)(1), 14212(b)(1)(C), Dec. 22, 2017, 131 Stat. 2217.)

REFERENCES IN TEXT

The Foreign Corrupt Practices Act of 1977, referred to in subsec. (a), is title I of Pub. L. 95-213, Dec. 19, 1977, 91 Stat. 1494, as amended, which enacted sections 78dd-1 to 78dd-3 of Title 15, Commerce and Trade, and amended sections 78m and 78ff of Title 15. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 78a of Title 15 and Tables.

Clause (iii), referred to in subsec. (c)(1)(B)(ii), means cl. (iii) of subsec. (c)(1)(B), which was amended by Pub. L. 115-97, §14211(b)(1). As amended, subcl. (I) was struck out and subcls. (II) and (III) were redesignated (I) and (II), respectively. See 2017 Amendment note below.

AMENDMENTS

2017—Subsec. (c)(1)(B)(i). Pub. L. 115-97, §14212(b)(1)(C), substituted “section 951(a)(1)(A)” for “section 951(a)(1)(A)(i)”.

Subsec. (c)(1)(B)(iii). Pub. L. 115-97, §14211(b)(1), redesignated subcls. (II) to (V) as (I) to (IV), respectively, and struck out former subcl. (I) which read as follows: “foreign base company oil related income.”

2007—Subsec. (b). Pub. L. 110-172 struck out second sentence which read as follows: “For purposes of the preceding sentence, income described in paragraph (2) or (3) of section 921(d) shall be treated as derived from sources within the United States.”

2005—Subsec. (c)(1)(B)(ii). Pub. L. 109-135 substituted “subclause (II) or (III) of clause (iii)” for “clause (iii)(III) or (IV)” and “clause (iii)(I)” for “clause (iii)(II)” in concluding provisions.

2004—Subsec. (c)(1)(B)(iii). Pub. L. 108-357 redesignated subcls. (II) to (VI) as (I) to (V), respectively, and struck out former subcl. (I) which read as follows: “foreign base company shipping income.”

1997—Subsec. (b). Pub. L. 105-34 inserted at end “For purposes of this subsection, any exemption (or reduction) with respect to the tax imposed by section 884 shall not be taken into account.”

1988—Subsec. (c)(1)(B)(ii). Pub. L. 100-647, §1012(i)(24), inserted at end “In determining the deficit attributable

to qualified activities described in clause (iii)(III) or (IV), deficits in earnings and profits (to the extent not previously taken into account under this section) for taxable years beginning after 1962 and before 1987 also shall be taken into account. In the case of the qualified activity described in clause (iii)(II), the rule of the preceding sentence shall apply, except that ‘1982’ shall be substituted for ‘1962.’”

Subsec. (c)(1)(B)(iii)(III) to (VI). Pub. L. 100-647, §1012(i)(22), (23), added subcls. (III) and (IV), redesignated former subcl. (III) as (V) and substituted “insurance income or foreign personal holding company income,” for “insurance income”, and redesignated former subcl. (IV) as (VI).

Subsec. (c)(1)(B)(vii). Pub. L. 100-647, §6131(a), added cl. (vii).

Subsec. (c)(1)(C). Pub. L. 100-647, §1012(i)(25)(A), added subpar. (C).

Subsec. (c)(3). Pub. L. 100-647, §1012(i)(16), added par. (3).

1986—Subsec. (a). Pub. L. 99-509, §8041(b)(1), added par. (5) and last sentence.

Subsec. (a)(1). Pub. L. 99-514, §1221(b)(3)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “the income derived from the insurance of United States risks (as determined under section 953), and”.

Subsec. (b). Pub. L. 99-514, §1876(c)(1), inserted last sentence.

Subsec. (c). Pub. L. 99-514, §1221(f), added subsec. (c) and struck out former subsec. (c) which read as follows: “For purposes of subsection (a), the subpart F income of any controlled foreign corporation for any taxable year shall not exceed the earnings and profits of such corporation for such year reduced by the amount (if any) by which—

“(1) an amount equal to—

“(A) the sum of the deficits in earnings and profits for prior taxable years beginning after December 31, 1962, plus

“(B) the sum of the deficits in earnings and profits for taxable years beginning after December 31, 1959, and before January 1, 1963 (reduced by the sum of the earnings and profits for such taxable years); exceeds

“(2) an amount equal to the sum of the earnings and profits for prior taxable years beginning after December 31, 1962, allocated to other earnings and profits under section 959(c)(3).

For purposes of the preceding sentence, any deficit in earnings and profits for any prior taxable year shall be taken into account under paragraph (1) for any taxable year only to the extent it has not been taken into account under such paragraph for any preceding taxable year to reduce earnings and profits of such preceding year.”

Subsec. (d). Pub. L. 99-509, §8041(b)(2), added subsec. (d).

Pub. L. 99-514, §1221(f), struck out subsec. (d), special rule in case of indirect ownership, which read as follows: “For purposes of subsection (c), if—

“(1) a United States shareholder owns (within the meaning of section 958(a)) stock of a foreign corporation, and by reason of such ownership owns (within the meaning of such section) stock of any other foreign corporation, and

“(2) any of such foreign corporations has a deficit in earnings and profits for the taxable year, then the earnings and profits for the taxable year of each such foreign corporation which is a controlled foreign corporation shall, with respect to such United States shareholder, be properly reduced to take into account any deficit described in paragraph (2) in such manner as the Secretary shall prescribe by regulations.”

1982—Subsec. (a). Pub. L. 97-248 inserted provision that the payments referred to in par. (4) are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person.

1976—Subsec. (a)(3). Pub. L. 94-455, §1062(a), added par. (3).

Subsec. (a)(4). Pub. L. 94-455, §1065(a)(1), added par. (4).

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

1966—Subsec. (b). Pub. L. 89-809 substituted “In the case of a controlled foreign corporation, subpart F income does not include any item of income from sources within the United States which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States” for “Subpart F income does not include any item includible in gross income under this chapter (other than this subpart) as income derived from sources within the United States of a foreign corporation engaged in trade or business in the United States”.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-97, title I, §14211(c), Dec. 22, 2017, 131 Stat. 2217, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2017, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

Amendment by section 14212(b)(1)(C) of Pub. L. 115-97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14212(c) of Pub. L. 115-97, set out as a note under section 851 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title IV, §415(d), Oct. 22, 2004, 118 Stat. 1511, provided that: “The amendments made by this section [amending this section and section 954 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.”

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XI, §1112(c)(2), Aug. 5, 1997, 111 Stat. 970, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1986.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(i)(16), (22)–(25)(A) 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, §6131(b), Nov. 10, 1988, 102 Stat. 3720, provided that: “The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 1221(f) of the Reform Act [Pub. L. 99-514].”

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1221(b)(3)(A), (f) of Pub. L. 99-514 applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, except as otherwise provided, see section 1221(g) of Pub. L. 99-514, set out as a note under section 954 of this title.

Amendment by section 1876(c)(1) 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.

Amendment by Pub. L. 99-509 effective Jan. 1, 1987, see section 8041(c) of Pub. L. 99-509, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to payments made after Sept. 3, 1982, see section 288(c) of Pub. L. 97-248, set out as a note under section 162 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1062 of Pub. L. 94-455 applicable to participation in or cooperation with an international boycott more than 30 days after Oct. 4, 1976, see section 1066(a) of Pub. L. 94-455, set out as a note under section 908 of this title.

Pub. L. 94-455, title X, §1066(b), Oct. 4, 1976, 90 Stat. 1654, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by section 1065 [amending this section and sections 995 and 964 of this title] apply to payments described in section 162(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] made more than 30 days after the date of enactment of this Act [Oct. 4, 1976].”

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.

DETERMINATION OF CORPORATE EARNINGS AND PROFITS FOR PURPOSES OF APPLYING SUBSECTION (c)(1)(A)

Pub. L. 100-647, title I, §1012(i)(6), Nov. 10, 1988, 102 Stat. 3508, provided that: “For purposes of applying section 952(c)(1)(A) of the 1986 Code, the earnings and profits of any corporation shall be determined without regard to any increase in earnings and profits under section 1023(e)(3)(C) of the Reform Act [Pub. L. 99-514, set out as an Effective Date note under section 846 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.

§ 953. Insurance income

(a) Insurance income

(1) In general

For purposes of section 952(a)(1), the term “insurance income” means any income which—

(A) is attributable to the issuing (or reinsuring) of an insurance or annuity contract, and

(B) would (subject to the modifications provided by subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance company.

(2) Exception

Such term shall not include any exempt insurance income (as defined in subsection (e)).

(b) Special rules

For purposes of subsection (a)—

(1) The following provisions of subchapter L shall not apply:

(A) So much of section 805(a)(8) as relates to the deduction allowed under section 172.

(B) Section 832(c)(5) (relating to certain capital losses).