

purposes of section 956(c)(2), or to treat a foreign corporation as a controlled foreign corporation under section 957, except that—

(1) In applying paragraph (1)(A) of section 318(a), stock owned by a nonresident alien individual (other than a foreign trust or foreign estate) shall not be considered as owned by a citizen or by a resident alien individual.

(2) In applying subparagraphs (A), (B), and (C) of section 318(a)(2), if a partnership, estate, trust, or corporation owns, directly or indirectly, more than 50 percent of the total combined voting power of all classes of stock entitled to vote of a corporation, it shall be considered as owning all the stock entitled to vote.

(3) In applying subparagraph (C) of section 318(a)(2), the phrase “10 percent” shall be substituted for the phrase “50 percent” used in subparagraph (C).

Paragraph (1) shall not apply for purposes of section 956(c)(2) to treat stock of a domestic corporation as not owned by a United States shareholder.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1018; amended Pub. L. 88-554, §4(b)(5), Aug. 31, 1964, 78 Stat. 763; Pub. L. 94-455, title X, §1021(b), Oct. 4, 1976, 90 Stat. 1619; Pub. L. 104-188, title I, §§1703(i)(4), 1704(t)(7), Aug. 20, 1996, 110 Stat. 1876, 1887; Pub. L. 115-97, title I, §§14213(a), 14301(c)(31), Dec. 22, 2017, 131 Stat. 2217, 2224.)

AMENDMENTS

2017—Subsec. (a)(1). Pub. L. 115-97, §14301(c)(31), substituted “960” for “960(a)(1)” in introductory provisions.

Subsec. (b). Pub. L. 115-97, §14213(a)(2), substituted “Paragraph (1)” for “Paragraphs (1) and (4)” in concluding provisions.

Subsec. (b)(4). Pub. L. 115-97, §14213(a)(1), struck out par. (4) which read as follows: “Subparagraphs (A), (B), and (C) of section 318(a)(3) shall not be applied so as to consider a United States person as owning stock which is owned by a person who is not a United States person.”

1996—Subsec. (a)(1). Pub. L. 104-188, §1704(t)(7), substituted “section 960(a)(1)” for “sections 955(b)(1)(A) and (B), 955(c)(2)(A)(ii), and 960(a)(1)” in introductory provisions.

Subsec. (b). Pub. L. 104-188, §1703(i)(4), substituted “956(c)(2)” for “956(b)(2)” wherever appearing in introductory and closing provisions.

1976—Subsec. (b). Pub. L. 94-455 inserted “956(b)(2)” after “purposes of sections 951(b), 954(d)(3),”, “to treat the stock of a domestic corporation as owned by a United States shareholder of the controlled foreign corporation for purposes of section 956(b)(2)” after “meaning of section 954(d)(3)” and “Paragraphs (1) and (4) shall not apply for purposes of section 956(b)(2) to treat stock of a domestic corporation as not owned by a United States shareholder” following subpar. (4).

1964—Subsec. (b). Pub. L. 88-554 redesignated pars. (4) and (5) as (3) and (4), respectively, struck out former par. (3) which related to ownership of stock by a partnership, estate, trust, or corporation for purposes of applying first sentence of subpars. (A) and (B), and subpar. (C)(i) of section 318(a)(2) of this title, and made amendments throughout subsec. (b) to conform to changes made in section 318 of this title by Pub. L. 88-554.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-97, title I, §14213(b), Dec. 22, 2017, 131 Stat. 2217, provided that: “The amendments made by this section [amending this section] shall apply to—

“(1) the last taxable year of foreign corporations beginning before January 1, 2018, and each subsequent taxable year of such foreign corporations, and

“(2) taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.”

Amendment by section 14301(c)(31) 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 14301(d) of Pub. L. 115-97, set out as a note under section 78 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1703(i)(4) of Pub. L. 104-188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103-66, §§13001-13444, to which such amendment relates, see section 1703(o) of Pub. L. 104-188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to taxable years of foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders within which or with which such taxable years of such corporations end, see section 1021(c) of Pub. L. 94-455, set out as a note under section 956 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88-554, set out as a note under section 318 of this title.

§ 959. Exclusion from gross income of previously taxed earnings and profits

(a) Exclusion from gross income of United States persons

For purposes of this chapter, the earnings and profits of a foreign corporation attributable to amounts which are, or have been, included in the gross income of a United States shareholder under section 951(a) shall not, when—

(1) such amounts are distributed to, or

(2) such amounts would, but for this subsection, be included under section 951(a)(1)(B) in the gross income of,

such shareholder (or any other United States person who acquires from any person any portion of the interest of such United States shareholder in such foreign corporation, but only to the extent of such portion, and subject to such proof of the identity of such interest as the Secretary may by regulations prescribe) directly or indirectly through a chain of ownership described under section 958(a), be again included in the gross income of such United States shareholder (or of such other United States person). The rules of subsection (c) shall apply for purposes of paragraph (1) of this subsection and the rules of subsection (f) shall apply for purposes of paragraph (2) of this subsection.

(b) Exclusion from gross income of certain foreign subsidiaries

For purposes of section 951(a), the earnings and profits of a controlled foreign corporation attributable to amounts which are, or have been, included in the gross income of a United

States shareholder under section 951(a), shall not, when distributed through a chain of ownership described under section 958(a), be also included in the gross income of another controlled foreign corporation in such chain for purposes of the application of section 951(a) to such other controlled foreign corporation with respect to such United States shareholder (or to any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder in the controlled foreign corporation, but only to the extent of such portion, and subject to such proof of identity of such interest as the Secretary may prescribe by regulations).

(c) Allocation of distributions

For purposes of subsections (a) and (b), section 316(a) shall be applied by applying paragraph (2) thereof, and then paragraph (1) thereof—

(1) first to the aggregate of—

(A) earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section), and

(B) earnings and profits attributable to amounts included in gross income under section 951(a)(1)(C) (or which would have been included except for subsection (a)(3) of this section),

with any distribution being allocated between earnings and profits described in subparagraph (A) and earnings and profits described in subparagraph (B) proportionately on the basis of the respective amounts of such earnings and profits,

(2) then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under subparagraph (B) or (C) of section 951(a)(1) because of the exclusions in paragraphs (2) and (3) of subsection (a) of this section), and

(3) then to other earnings and profits.

References in this subsection to section 951(a)(1)(C) and subsection (a)(3) shall be treated as references to such provisions as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996.

(d) Distributions excluded from gross income not to be treated as dividends

Any distribution excluded from gross income under subsection (a) shall be treated, for purposes of this chapter, as a distribution which is not a dividend; except that such distributions shall immediately reduce earnings and profits.

(e) Coordination with amounts previously taxed under section 1248

For purposes of this section and section 960(c), any amount included in the gross income of any person as a dividend by reason of subsection (a) or (f) of section 1248 shall be treated as an amount included in the gross income of such person (or, in any case to which section 1248(e) applies, of the domestic corporation referred to in section 1248(e)(2)) under section 951(a)(1)(A).

(f) Allocation rules for certain inclusions

(1) In general

For purposes of this section, amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3).

(2) Treatment of distributions

In applying this section, actual distributions shall be taken into account before amounts that would be included under section 951(a)(1)(B) (determined without regard to this section).

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1019; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title I, §133(b)(1), July 18, 1984, 98 Stat. 668; Pub. L. 99-514, title XII, §1226(b), Oct. 22, 1986, 100 Stat. 2560; Pub. L. 100-647, title I, §1012(bb)(7)(A), Nov. 10, 1988, 102 Stat. 3536; Pub. L. 103-66, title XIII, §1323(c)(1), (2), (4)(A), (B), Aug. 10, 1993, 107 Stat. 497, 498; Pub. L. 104-188, title I, §1501(b)(4)-(8), Aug. 20, 1996, 110 Stat. 1826; Pub. L. 115-97, title I, §14301(c)(32), (33), Dec. 22, 2017, 131 Stat. 2224.)

REFERENCES IN TEXT

The date of the enactment of the Small Business Job Protection Act of 1996, referred to in subsec. (c), is the date of enactment of Pub. L. 104-188, which was approved Aug. 20, 1996.

AMENDMENTS

2017—Subsec. (d). Pub. L. 115-97, §14301(c)(32), substituted “Any” for “Except as provided in section 960(a)(3), any”.

Subsec. (e). Pub. L. 115-97, §14301(c)(33), substituted “section 960(c)” for “section 960(b)”.

1996—Subsec. (a). Pub. L. 104-188, §1501(b)(4), (5), substituted “paragraph (2)” for “paragraphs (2) and (3)” in closing provisions, inserted “or” at end of par. (1), struck out “or” at end of par. (2), and struck out par. (3) which read as follows: “such amounts would, but for this subsection, be included under section 951(a)(1)(C) in the gross income of.”

Subsec. (c). Pub. L. 104-188, §1501(b)(6), inserted at end “References in this subsection to section 951(a)(1)(C) and subsection (a)(3) shall be treated as references to such provisions as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996.”

Subsec. (f)(1). Pub. L. 104-188, §1501(b)(7), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “For purposes of this section—

“(A) amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3), and

“(B) amounts that would be included under subparagraph (C) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2) to the extent the earnings so described were accumulated in taxable years beginning after September 30, 1993, and then to earnings described in subsection (c)(3).”

Subsec. (f)(2). Pub. L. 104-188, §1501(b)(8), substituted “section 951(a)(1)(B)” for “subparagraphs (B) and (C) of section 951(a)(1)”.

1993—Subsec. (a). Pub. L. 103-66, § 13231(c)(2)(A), (4)(A), substituted in introductory provisions “earnings and profits” for “earnings and profits for taxable year” and inserted at end of closing provisions “The rules of subsection (c) shall apply for purposes of paragraph (1) of this subsection and the rules of subsection (f) shall apply for purposes of paragraphs (2) and (3) of this subsection.”

Subsec. (a)(3). Pub. L. 103-66, § 13231(c)(1), added par. (3).

Subsec. (b). Pub. L. 103-66, § 13231(c)(4)(A), substituted “earnings and profits” for “earnings and profits for a taxable year”.

Subsec. (c)(1). Pub. L. 103-66, § 13231(c)(2)(C), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “first to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section).”

Subsec. (c)(2). Pub. L. 103-66, § 13231(c)(4)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under section 951(a)(1)(B) because of the exclusion in subsection (a)(2) of this section), and”.

Subsec. (f). Pub. L. 103-66, § 13231(c)(2)(B), added subsec. (f).

1988—Subsec. (e). Pub. L. 100-647 substituted “such person (or, in any case to which section 1248(e) applies, of the domestic corporation referred to in section 1248(e)(2)) under” for “such person under”.

1986—Subsec. (d). Pub. L. 99-514 inserted “; except that such distributions shall immediately reduce earnings and profits”.

1984—Subsec. (e). Pub. L. 98-369 added subsec. (e).

1976—Subsecs. (a), (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by 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 14301(d) of Pub. L. 115-97, set out as a note under section 78 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104-188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103-66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, § 1012(bb)(7)(B), Nov. 10, 1988, 102 Stat. 3536, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply in the case of transactions to which section 1248(e) of the 1986 Code applies and which occur after December 31, 1986.”

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XII, § 1226(c)(2), Oct. 22, 1986, 100 Stat. 2560, provided that: “The amendment made by subsection (b) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986].”

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, § 133(d)(2), (3), July 18, 1984, 98 Stat. 668, as amended by Pub. L. 99-514, § 2, title

XVIII, § 1810(i)(2), Oct. 22, 1986, 100 Stat. 2095, 2829; Pub. L. 100-647, title I, § 1018(g)(2), Nov. 10, 1988, 102 Stat. 3582, provided that:

“(2) SUBSECTIONS (b) AND (c).—Except as provided in paragraph (3), the amendments made by subsections (b) and (c) [amending this section and section 1248 of this title] shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] applies occurring after the date of the enactment of this Act [July 18, 1984].

“(3) ELECTION OF EARLIER DATE FOR CERTAIN TRANSACTIONS.—

“(A) IN GENERAL.—If the appropriate election is made under subparagraph (B), the amendments made by subsection (b) [amending this section and section 1248 of this title] shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of such Code applies occurring after October 9, 1975.

“(B) ELECTION.—

“(i) Subparagraph (A) shall apply with respect to transactions to which subsection (a) of section 1248 of such Code applies if the foreign corporation described in such subsection (or its successor in interest) so elects.

“(ii) Subparagraph (A) shall apply with respect to transactions to which subsection (f) of section 1248 of such Code applies if the domestic corporation described in section 1248(f)(1) of such Code (or its successor) so elects.

“(iii) Any election under clause (i) or (ii) shall be made not later than the date which is 1 year after the date of the enactment of the Tax Reform Act of 1986 [Oct. 22, 1986] and shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe.”

§ 960. Deemed paid credit for subpart F inclusions

(a) In general

For purposes of subpart A of this part, if there is included in the gross income of a domestic corporation any item of income under section 951(a)(1) with respect to any controlled foreign corporation with respect to which such domestic corporation is a United States shareholder, such domestic corporation shall be deemed to have paid so much of such foreign corporation’s foreign income taxes as are properly attributable to such item of income.

(b) Special rules for distributions from previously taxed earnings and profits

For purposes of subpart A of this part—

(1) In general

If any portion of a distribution from a controlled foreign corporation to a domestic corporation which is a United States shareholder with respect to such controlled foreign corporation is excluded from gross income under section 959(a), such domestic corporation shall be deemed to have paid so much of such foreign corporation’s foreign income taxes as—

(A) are properly attributable to such portion, and

(B) have not been deemed to have to¹ been paid by such domestic corporation under this section for the taxable year or any prior taxable year.

(2) Tiered controlled foreign corporations

If section 959(b) applies to any portion of a distribution from a controlled foreign corpora-

¹ So in original.