

shall not exceed an amount equal to the amount of tax paid under this chapter with respect to the amounts required to be included in his gross income under section 951(a).

(b) Reduction in basis

(1) In general

Under regulations prescribed by the Secretary, the adjusted basis of stock or other property with respect to which a United States shareholder or a United States person receives an amount which is excluded from gross income under section 959(a) shall be reduced by the amount so excluded. In the case of a United States shareholder who has made an election under section 962 for any prior taxable year, the reduction in basis provided by this paragraph shall not exceed an amount equal to the amount received which is excluded from gross income under section 959(a) after the application of section 962(d).

(2) Amount in excess of basis

To the extent that an amount excluded from gross income under section 959(a) exceeds the adjusted basis of the stock or other property with respect to which it is received, the amount shall be treated as gain from the sale or exchange of property.

(c) Basis adjustments in stock held by foreign corporations

Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning stock in a controlled foreign corporation which is owned by another controlled foreign corporation, then adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to—

- (1) the basis of such stock, and
- (2) the basis of stock in any other controlled foreign corporation by reason of which the United States shareholder is considered under section 958(a)(2) as owning the stock described in paragraph (1),

but only for the purposes of determining the amount included under section 951 in the gross income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, 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). The preceding sentence shall not apply with respect to any stock to which a basis adjustment applies under subsection (a) or (b).

(d) Basis in specified 10-percent owned foreign corporation reduced by nontaxed portion of dividend for purposes of determining loss

If a domestic corporation received a dividend from a specified 10-percent owned foreign corporation (as defined in section 245A) in any taxable year, solely for purposes of determining loss on any disposition of stock of such foreign corporation in such taxable year or any subsequent taxable year, the basis of such domestic corporation in such stock shall be reduced (but not below zero) by the amount of any deduction allowable to such domestic corporation under

section 245A with respect to such stock except to the extent such basis was reduced under section 1059 by reason of a dividend for which such a deduction was allowable.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1022; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 105-34, title XI, §1112(b)(1), Aug. 5, 1997, 111 Stat. 969; Pub. L. 109-135, title IV, §409(b), Dec. 21, 2005, 119 Stat. 2635; Pub. L. 115-97, title I, §14102(b)(1), Dec. 22, 2017, 131 Stat. 2192.)

AMENDMENTS

2017—Subsec. (d). Pub. L. 115-97 added subsec. (d).

2005—Subsec. (c). Pub. L. 109-135 amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: “Under regulations prescribed by the Secretary, if a United States shareholder is treated under section 958(a)(2) as owning any stock in a controlled foreign corporation which is actually owned by another controlled foreign corporation, adjustments similar to the adjustments provided by subsections (a) and (b) shall be made to the basis of such stock in the hands of such other controlled foreign corporation, but only for the purposes of determining the amount included under section 951 in the gross income of such United States shareholder (or any other United States shareholder who acquires from any person any portion of the interest of such United States shareholder by reason of which such shareholder was treated as owning such stock, 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).”

1997—Subsec. (c). Pub. L. 105-34 added subsec. (c).

1976—Subsecs. (a), (b)(1). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 2017 AMENDMENT

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

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-135, title IV, §409(d), Dec. 21, 2005, 119 Stat. 2636, provided that: “The amendments made by this section [amending this section and sections 6038B, 6411, and 6601 of this title] shall take effect as if included in the provisions of the Taxpayer Relief Act of 1997 [Pub. L. 105-34] to which they relate.”

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XI, §1112(b)(2), Aug. 5, 1997, 111 Stat. 969, provided that: “The amendment made by paragraph (1) [amending this section] shall apply for purposes of determining inclusions for taxable years of United States shareholders beginning after December 31, 1997.”

DUAL RESIDENT COMPANIES

Basis adjustments of this section not applicable in certain circumstances involving dual resident companies, see section 6126 of Pub. L. 100-647, set out as a note under section 1502 of this title.

§ 962. Election by individuals to be subject to tax at corporate rates

(a) General rule

Under regulations prescribed by the Secretary, in the case of a United States shareholder who is an individual and who elects to have the provisions of this section apply for the taxable year—

- (1) the tax imposed under this chapter on amounts which are included in his gross in-

come under section 951(a) shall (in lieu of the tax determined under sections 1 and 55) be an amount equal to the tax which would be imposed under section 11 if such amounts were received by a domestic corporation, and

(2) for purposes of applying the provisions of section 960¹ (relating to foreign tax credit) such amounts shall be treated as if they were received by a domestic corporation.

(b) Election

An election to have the provisions of this section apply for any taxable year shall be made by a United States shareholder at such time and in such manner as the Secretary shall prescribe by regulations. An election made for any taxable year may not be revoked except with the consent of the Secretary.

(c) Pro ration of each section 11 bracket amount

For purposes of applying subsection (a)(1), the amount in each taxable income bracket in the tax table in section 11(b) shall not exceed an amount which bears the same ratio to such bracket amount as the amount included in the gross income of the United States shareholder under section 951(a) for the taxable year bears to such shareholder's pro rata share of the earnings and profits for the taxable year of all controlled foreign corporations with respect to which such shareholder includes any amount in gross income under section 951(a).

(d) Special rule for actual distributions

The earnings and profits of a foreign corporation attributable to amounts which were included in the gross income of a United States shareholder under section 951(a) and with respect to which an election under this section applied shall, when such earnings and profits are distributed, notwithstanding the provisions of section 959(a)(1), be included in gross income to the extent that such earnings and profits so distributed exceed the amount of tax paid under this chapter on the amounts to which such election applied.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1023; amended Pub. L. 94-12, title III, §303(c)(3), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94-164, §4(d)(1), Dec. 23, 1975, 89 Stat. 975; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95-600, title III, §301(b)(16), Nov. 6, 1978, 92 Stat. 2822; Pub. L. 100-647, title I, §1007(g)(11), Nov. 10, 1988, 102 Stat. 3435; Pub. L. 115-97, title I, §12001(b)(15), Dec. 22, 2017, 131 Stat. 2094.)

REFERENCES IN TEXT

Section 960, referred to in subsec. (a)(2), was amended extensively by Pub. L. 115-97, and, as so amended, relates to deemed paid credit for subpart F inclusions.

AMENDMENTS

2017—Subsec. (a)(1). Pub. L. 115-97 substituted “section 11” for “sections 11 and 55”.

1988—Subsec. (a)(1). Pub. L. 100-647 substituted “sections 1 and 55” and “sections 11 and 55” for “section 1” and “section 11”, respectively.

1978—Subsec. (c). Pub. L. 95-600 substituted provisions relating to the pro ration of each section 11 bracket amount for provisions relating to the surtax exemption.

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

1975—Subsec. (c). Pub. L. 94-164 substituted “same ratio to the surtax exemption” for “same ratio to \$25,000” in subsec. (c) as such subsec. (c) is in effect for taxable years ending after Dec. 31, 1975.

Pub. L. 94-12 substituted “\$50,000” for “\$25,000”.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 12001(c) of Pub. L. 115-97, set out as a note under section 11 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 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as a note under section 11 of this title.

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENTS

Amendment by Pub. L. 94-164 applicable to taxable years beginning after Dec. 31, 1975, see section 4(e) of Pub. L. 94-164, set out as a note under section 11 of this title.

Amendment by Pub. L. 94-12 applicable to taxable years ending after Dec. 31, 1974, but to cease to apply for taxable years ending after Dec. 31, 1975, see section 305(b)(1) of Pub. L. 94-12, set out as a note under section 11 of this title.

[§ 963. Repealed. Pub. L. 94-12, title VI, § 602(a)(1), Mar. 29, 1975, 89 Stat. 58]

Section, added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1023; amended Pub. L. 88-272, title I, §123(b), Feb. 26, 1964, 78 Stat. 29; Pub. L. 90-364, title I, §102(b), June 28, 1968, 82 Stat. 255; Pub. L. 91-53, §5(b), Aug. 7, 1969, 83 Stat. 95; Pub. L. 91-172, title VII, §701(b), Dec. 30, 1969, 83 Stat. 659, dealt with the receipt of minimum distributions by domestic corporations.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to taxable years for foreign corporations beginning after Dec. 31, 1975, and to taxable years of United States shareholders (within the meaning of section 951(b) of this title) within which or with which such taxable years of such foreign corporations end, see section 602(f) of Pub. L. 94-12, set out as an Effective Date note under section 954 of this title.

§ 964. Miscellaneous provisions

(a) Earnings and profits

Except as provided in section 312(k)(4), for purposes of this subpart, the earnings and profits of any foreign corporation, and the deficit in 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. In determining such earnings and profits, or the deficit in such earnings and profits, the amount of any illegal bribe, kickback, or other payment (within the meaning of section 162(c)) shall not be taken into account to decrease such earnings and profits or to increase such deficit. The payments referred to in the preceding sentence are payments

¹ See References in Text note below.