

## § 1442. Withholding of tax on foreign corporations

### (a) General rule

In the case of foreign corporations subject to taxation under this subtitle, there shall be deducted and withheld at the source in the same manner and on the same items of income as is provided in section 1441 a tax equal to 30 percent thereof. For purposes of the preceding sentence, the references in section 1441(b) to sections 871(a)(1)(C) and (D) shall be treated as referring to sections 881(a)(3) and (4), the reference in section 1441(c)(1) to section 871(b)(2) shall be treated as referring to section 842 or section 882(a)(2), as the case may be, the reference in section 1441(c)(5) to section 871(a)(1)(D) shall be treated as referring to section 881(a)(4), the reference in section 1441(c)(8) to section 871(a)(1)(C) shall be treated as referring to section 881(a)(3), the references in section 1441(c)(9) to sections 871(h) and 871(h)(3) or (4) shall be treated as referring to sections 881(c) and 881(c)(3) or (4), the reference in section 1441(c)(10) to section 871(i)(2) shall be treated as referring to section 881(d), and the references in section 1441(c)(12) to sections 871(a) and 871(k) shall be treated as referring to sections 881(a) and 881(e) (except that for purposes of applying subparagraph (A) of section 1441(c)(12), as so modified, clause (ii) of section 881(e)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause).

### (b) Exemption

Subject to such terms and conditions as may be provided by regulations prescribed by the Secretary, subsection (a) shall not apply in the case of a foreign corporation engaged in trade or business within the United States if the Secretary determines that the requirements of subsection (a) impose an undue administrative burden and that the collection of the tax imposed by section 881 on such corporation will not be jeopardized by the exemption.

### (c) Exception for certain possessions corporations

#### (1) Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands

For purposes of this section, the term “foreign corporation” does not include a corporation created or organized in Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands or under the law of any such possession if the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met with respect to such corporation.

#### (2) Commonwealth of Puerto Rico

##### (A) In general

If dividends are received during a taxable year by a corporation—

(i) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

(ii) with respect to which the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met for the taxable year,

subsection (a) shall be applied for such taxable year by substituting “10 percent” for “30 percent”.

### (B) Applicability

If, on or after the date of the enactment of this paragraph, an increase in the rate of the Commonwealth of Puerto Rico’s withholding tax which is generally applicable to dividends paid to United States corporations not engaged in a trade or business in the Commonwealth to a rate greater than 10 percent takes effect, this paragraph shall not apply to dividends received on or after the effective date of the increase.

(Aug. 16, 1954, ch. 736, 68A Stat. 358; Pub. L. 89-809, title I, §104(c), Nov. 13, 1966, 80 Stat. 1557; Pub. L. 92-178, title III, §313(e), Dec. 10, 1971, 85 Stat. 528; Pub. L. 92-606, §1(e)(2), Oct. 31, 1972, 86 Stat. 1497; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title I, §127(e)(2), 130(b), title IV, §474(r)(29)(I), July 18, 1984, 98 Stat. 652, 661, 845; Pub. L. 99-514, title XII, §1273(b)(2)(B), title XVIII, §1810(d)(3)(E), Oct. 22, 1986, 100 Stat. 2596, 2825; Pub. L. 100-647, title I, §1012(g)(7), Nov. 10, 1988, 102 Stat. 3501; Pub. L. 103-66, title XIII, §13237(c)(5), Aug. 10, 1993, 107 Stat. 508; Pub. L. 108-357, title IV, §§411(a)(3)(B), 420(b), Oct. 22, 2004, 118 Stat. 1504, 1513.)

#### REFERENCES IN TEXT

The date of the enactment of this paragraph, referred to in subsec. (c)(2)(B), is the date of enactment of Pub. L. 108-357, which was approved Oct. 22, 2004.

#### AMENDMENTS

2004—Subsec. (a). Pub. L. 108-357, §411(a)(3)(B), substituted “the reference in section 1441(c)(10)” for “and the reference in section 1441(c)(10)” and inserted before period at end “, and the references in section 1441(c)(12) to sections 871(a) and 871(k) shall be treated as referring to sections 881(a) and 881(e) (except that for purposes of applying subparagraph (A) of section 1441(c)(12), as so modified, clause (ii) of section 881(e)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause)”.

Subsec. (c). Pub. L. 108-357, §420(b), designated existing provisions as par. (1), inserted heading, and added par. (2).

1993—Subsec. (a). Pub. L. 103-66 substituted “871(h)(3) or (4)” for “871(h)(3)” and “881(c)(3) or (4)” for “881(c)(3)”.

1988—Subsec. (a). Pub. L. 100-647 struck out “and” after “to section 881(a)(3),” and inserted before period at end “, and the reference in section 1441(c)(10) to section 871(i)(2) shall be treated as referring to section 881(d)”.

1986—Subsec. (a). Pub. L. 99-514, §1810(d)(3)(E), substituted “871(h)” for “871(h)(2)”, “881(c)” for “881(c)(2)”, and “1441(c)(9)” for “1449(c)(9)”.

Subsec. (c). Pub. L. 99-514, §1273(b)(2)(B), amended subsec. (c) generally, substituting reference to “certain possessions corporations” for reference to “certain Guam and Virgin Islands corporations” in heading, and in text extending “foreign corporation” exception so as to not include corporation created or organized in Guam, American Samoa, Northern Mariana Islands, or the Virgin Islands, and striking out par. (2) which declared that par. (1) not apply to tax imposed in Guam, and par. (3) which referred to sections 934 and 943a for tax imposed in Virgin Islands.

1984—Subsec. (a). Pub. L. 98-369, §474(r)(29)(I), struck out “or section 1451” after “provided in section 1441”

and struck out “; except that, in the case of interest described in section 1451 (relating to tax-free covenant bonds), the deduction and withholding shall be at the rate specified therein” after “a tax equal to 30 percent thereof”.

Pub. L. 98-369, §127(e)(2), struck out “and” after “section 881(a)(4),” and inserted “, and the references in section 1449(c)(9) to sections 871(h)(2) and 871(h)(3) shall be treated as referring to sections 881(c)(2) and 881(c)(3)”.

Subsec. (c). Pub. L. 98-369, §130(b), substituted provision relating to exception for certain Guam and Virgin Islands corporations for provision relating to exception for Guam corporations.

1976—Subsec. (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary” in two places.

1972—Subsec. (c). Pub. L. 92-606 added subsec. (c).

1971—Subsec. (a). Pub. L. 92-178 provided that reference in section 1441(c)(8) to section 871(a)(1)(C) shall be treated as referring to section 881(a)(3).

1966—Pub. L. 89-809 limited the withholding of tax at the 30 percent rate to items of fixed or determinable United States source income not effectively connected with the conduct of a trade or business in the United States and authorized the granting of an exemption from the withholding requirement in the case of a foreign corporation engaged in trade or business within the United States if the Secretary or his delegate determines that the withholding imposes an undue administrative burden and that the collection of the tax will not be jeopardized by the exemption.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 411(a)(3)(B) of Pub. L. 108-357 applicable to dividends with respect to taxable years of regulated investment companies beginning after Dec. 31, 2004, see section 411(d)(1) of Pub. L. 108-357, set out as a note under section 871 of this title.

Amendment by section 420(b) of Pub. L. 108-357 applicable to dividends paid after Oct. 22, 2004, see section 420(d) of Pub. L. 108-357, set out as a note under section 881 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to interest received after Dec. 31, 1993, see section 13237(d) of Pub. L. 103-66, set out as a note under section 871 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 1986 AMENDMENT

Amendment by section 1273(b)(2)(B) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99-514, set out as a note under section 931 of this title.

Amendment by section 1810(d)(3)(E) 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.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 127(e)(2) of Pub. L. 98-369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years after such date, see section 127(g)(1) of Pub. L. 98-369, set out as a note under section 871 of this title.

Amendment by section 130(b) of Pub. L. 98-369 applicable to payments made after Mar. 1, 1984, in taxable years ending after such date, see section 130(d) of Pub. L. 98-369, set out as a note under section 881 of this title.

Amendment by section 474(r)(29)(I) of Pub. L. 98-369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98-369, set out as a note under section 33 of this title.

#### EFFECTIVE DATE OF 1972 AMENDMENT

Pub. L. 92-606, §2, Oct. 31, 1972, 86 Stat. 1497, provided in part that: “The amendment made by section 1(e)(2) [amending this section] shall take effect on the day after the date of enactment of this Act [Oct. 31, 1972].”

#### EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-178 applicable with respect to payments occurring on or after Apr. 1, 1972, see section 313(f) of Pub. L. 92-178, set out as a note under section 871 of this title.

#### 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.

#### 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.

#### WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

For provisions relating to withholding of tax on non-resident aliens and foreign corporations, see Pub. L. 97-248, title III, §342, Sept. 3, 1982, 96 Stat. 635, set out as a note under section 1441 of this title.

### § 1443. Foreign tax-exempt organizations

#### (a) Income subject to section 511

In the case of income of a foreign organization subject to the tax imposed by section 511, this chapter shall apply to income includible under section 512 in computing its unrelated business taxable income, but only to the extent and subject to such conditions as may be provided under regulations prescribed by the Secretary.

#### (b) Income subject to section 4948

In the case of income of a foreign organization subject to the tax imposed by section 4948(a), this chapter shall apply, except that the deduction and withholding shall be at the rate of 4 percent and shall be subject to such conditions as may be provided under regulations prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 358; Pub. L. 91-172, title I, §§101(j)(22), 121(d)(2)(C), Dec. 30, 1969, 83 Stat. 528, 547; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

#### AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” in two places.

1969—Pub. L. 91-172, §101(j)(22), designated existing provisions as subsec. (a) and added subsec. (b).

Subsec. (a). Pub. L. 91-172, §121(d)(2)(C), substituted “income” for “rents” after “this chapter shall apply to”.

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(j)(22) of Pub. L. 91-172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L.