ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For purposes of subsec. (b) of this section, all amounts allowable as a deduction for qualified research and experimental expenditures are to be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States for taxable years beginning after Aug. 13, 1983, and on or before Aug. 1, 1986, see section 126 of Pub. L. 98–369, set out as a note under section 861 of this title.

§ 864. Definitions and special rules

(a) Produced

For purposes of this part, the term ''produced'' includes created, fabricated, manufactured, extracted, processed, cured, or aged.

(b) Trade or business within the United States

For purposes of this part, part II, and chapter 3, the term ''trade or business within the United States'' includes the performance of personal services within the United States at any time within the taxable year, but does not include—

(1) Performance of personal services for foreign employer

The performance of personal services—

(A) for a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, or

(B) for an office or place of business maintained in a foreign country or in a possession of the United States by an individual who is a citizen or resident of the United States or by a domestic partnership or a domestic corporation,

by a nonresident alien individual temporarily present in the United States for a period or periods not exceeding a total of 90 days during the taxable year and whose compensation for such services does not exceed in the aggregate $3,000.

(2) Trading in securities or commodities

(A) Stocks and securities

(i) In general

Trading in stocks or securities through a resident broker, commission agent, custodian, or other independent agent.

(ii) Trading for taxpayer's own account

Trading in stocks or securities for the taxpayer's own account, whether by the taxpayer or his employees or through a resident broker, commission agent, custodian, or other agent, and whether or not any such employee or agent has discretionary authority to make decisions in effecting the transactions. This clause shall not apply in the case of a dealer in stocks or securities.

(B) Commodities

(i) In general

Trading in commodities through a resident broker, commission agent, custodian, or other independent agent.

(ii) Trading for taxpayer's own account

Trading in commodities for the taxpayer or his employees or through a resident broker, commission agent, custodian, or other agent, and whether or not any such employee or agent has discretionary authority to make decisions in effecting the transactions. This clause shall not apply in the case of a dealer in commodities.

(iii) Limitation

Clauses (i) and (ii) shall apply only if the commodities are of a kind customarily dealt in on an organized commodity exchange and if the transaction is of a kind customarily consummated at such place.

(C) Limitation

Subparagraphs (A)(i) and (B)(i) shall apply only if, at no time during the taxable year, the taxpayer has an office or other fixed place of business in the United States through which or by the direction of which the transactions in stocks or securities, or in commodities, as the case may be, are effected.

(c) Effectively connected income, etc.

(1) General rule

For purposes of this title—

(A) In the case of a nonresident alien individual or a foreign corporation engaged in trade or business within the United States during the taxable year, the rules set forth in paragraphs (2), (3), (4), (6), (7), and (8) shall apply in determining the income, gain, or loss which shall be treated as effectively connected with the conduct of a trade or business within the United States.

(B) Except as provided in paragraph (6)[1] (7), or (8) or in section 871(d) or sections 882(d) and (e), in the case of a nonresident alien individual or a foreign corporation not engaged in trade or business within the United States during the taxable year, no income, gain, or loss shall be treated as effectively connected with the conduct of a trade or business within the United States.

(2) Periodical, etc., income from sources within United States—factors

In determining whether income from sources within the United States of the types described in section 871(a)(1), section 871(h), section 881(a), or section 881(c), or whether gain or loss from sources within the United States from the sale or exchange of capital assets, is effectively connected with the conduct of a trade or business within the United States, the factors taken into account shall include whether—

(A) the income, gain, or loss is derived from assets used in or held for use in the conduct of such trade or business, or

(B) the activities of such trade or business were a material factor in the realization of the income, gain, or loss.

In determining whether an asset is used in or held for use in the conduct of such trade or business or whether the activities of such

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

trade or business were a material factor in realizing an item of income, gain, or loss, due regard shall be given to whether or not such asset or such income, gain, or loss was accounted for through such trade or business.

(3) Other income from sources within United States

All income, gain, or loss from sources within the United States (other than income, gain, or loss to which paragraph (2) applies) shall be treated as effectively connected with the conduct of a trade or business within the United States.

(4) Income from sources without United States

(A) Except as provided in subparagraphs (B) and (C), no income, gain, or loss from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States.

(B) Income, gain, or loss from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States by a nonresident alien individual or a foreign corporation if such person has an office or other fixed place of business within the United States to which such income, gain, or loss is attributable and such income, gain, or loss—

(i) consists of rents or royalties for the use of or for the privilege of using intangible property described in section 862(a)(4) derived in the active conduct of such trade or business;

(ii) consists of dividends, interest, or amounts received for the provision of guarantees of indebtedness, and either is derived in the active conduct of a banking, financing, or similar business within the United States or is received by a corporation the principal business of which is trading in stocks or securities for its own account; or

(iii) is derived from the sale or exchange (outside the United States) through such office or other fixed place of business of personal property described in section 1221(a)(1), except that this clause shall not apply if the property is sold or exchanged for use, consumption, or disposition outside the United States and an office or other fixed place of business of the taxpayer in a foreign country participated materially in such sale.

Any income or gain which is equivalent to any item of income or gain described in clause (i), (ii), or (iii) shall be treated in the same manner as such item for purposes of this subparagraph.

(C) In the case of a foreign corporation taxable under part I or part II of subchapter L, any income from sources without the United States which is attributable to its United States business shall be treated as effectively connected with the conduct of a trade or business within the United States.

(D) No income from sources without the United States shall be treated as effectively connected with the conduct of a trade or business within the United States if it either—

(i) consists of dividends, interest, or royalties paid by a foreign corporation in which the taxpayer owns (within the meaning of section 958(a)), or is considered as owning (by applying the ownership rules of section 958(b)), more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or

(ii) is subpart F income within the meaning of section 952(a).

(5) Rules for application of paragraph (4)(B)

For purposes of subparagraph (B) of paragraph (4)—

(A) in determining whether a nonresident alien individual or a foreign corporation has an office or other fixed place of business, an office or other fixed place of business of an agent shall be disregarded unless such agent (i) has the authority to negotiate and conclude contracts in the name of the nonresident alien individual or foreign corporation and regularly exercises that authority or has a stock of merchandise from which he regularly fills orders on behalf of such individual or foreign corporation, and (ii) is not a general commission agent, broker, or other agent of independent status acting in the ordinary course of his business,

(B) income, gain, or loss shall not be considered as attributable to an office or other fixed place of business within the United States unless such office or fixed place of business is a material factor in the production of such income, gain, or loss and such office or fixed place of business regularly carries on activities of the type from which such income, gain, or loss is derived, and

(C) the income, gain, or loss which shall be attributable to an office or other fixed place of business within the United States shall be the income, gain, or loss property allocable thereto, but, in the case of a sale or exchange described in clause (iii) of such subparagraph, the income which shall be treated as attributable to an office or other fixed place of business within the United States shall not exceed the income which would be derived from sources within the United States if the sale or exchange were made in the United States.

(6) Treatment of certain deferred payments, etc.

For purposes of this title, in the case of any income or gain of a nonresident alien individual or a foreign corporation which—

(A) is taken into account for any taxable year, but

(B) is attributable to a sale or exchange of property or the performance of services (or any other transaction) in any other taxable year,

the determination of whether such income or gain is taxable under section 871(b) or 882 (as the case may be) shall be made as if such income or gain were taken into account in such other taxable year and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the taxable year referred to in subparagraph (A).

(7) Treatment of certain property transactions

For purposes of this title, if—

(A) any property ceases to be used or held for use in connection with the conduct of a trade or business within the United States, and

(B) such property is disposed of within 10 years after such cessation,

the determination of whether any income or gain attributable to such disposition is taxable under section 871(b) or 882 (as the case may be) shall be made as if such sale or exchange occurred immediately before such cessation and without regard to the requirement that the taxpayer be engaged in a trade or business within the United States during the taxable year for which such income or gain is taken into account.

(8) Gain or loss of foreign persons from sale or exchange of certain partnership interests

(A) In general

Notwithstanding any other provision of this subtitle, if a nonresident alien individual or foreign corporation owns, directly or indirectly, an interest in a partnership which is engaged in any trade or business within the United States, gain or loss on the sale or exchange of all (or any portion of) such interest shall be treated as effectively connected with the conduct of such trade or business to the extent such gain or loss does not exceed the amount determined under subparagraph (B).

(B) Amount treated as effectively connected

The amount determined under this subparagraph with respect to any partnership interest sold or exchanged—

(i) in the case of any gain on the sale or exchange of the partnership interest, is—

(I) the portion of the partner's distributive share of the amount of gain which would have been effectively connected with the conduct of a trade or business within the United States if the partnership had sold all of its assets at their fair market value as of the date of the sale or exchange of such interest, or

(II) zero if no gain on such deemed sale would have been so effectively connected, and

(ii) in the case of any loss on the sale or exchange of the partnership interest, is—

(I) the portion of the partner's distributive share of the amount of loss on the deemed sale described in clause (i)(I) which would have been so effectively connected, or

(II) zero if no loss on such deemed sale would be have been so effectively connected.

For purposes of this subparagraph, a partner's distributive share of gain or loss on the deemed sale shall be determined in the same manner as such partner's distributive share of the non-separately stated taxable income or loss of such partnership.

(C) Coordination with United States real property interests

If a partnership described in subparagraph (A) holds any United States real property interest (as defined in section 897(c)) at the time of the sale or exchange of the partnership interest, then the gain or loss treated as effectively connected income under subparagraph (A) shall be reduced by the amount so treated with respect to such United States real property interest under section 897.

(D) Sale or exchange

For purposes of this paragraph, the term ''sale or exchange'' means any sale, exchange, or other disposition.

(E) Secretarial authority

The Secretary shall prescribe such regulations or other guidance as the Secretary determines appropriate for the application of this paragraph, including with respect to exchanges described in section 332, 351, 354, 355, 356, or 361.

(d) Treatment of related person factoring income

(1) In general

For purposes of the provisions set forth in paragraph (2), if any person acquires (directly or indirectly) a trade or service receivable from a related person, any income of such person from the trade or service receivable so acquired shall be treated as if it were interest on a loan to the obligor under the receivable.

(2) Provisions to which paragraph (1) applies

The provisions set forth in this paragraph are as follows:

(A) Section 904 (relating to limitation on foreign tax credit).

(B) Subpart F of part III of this subchapter (relating to controlled foreign corporations).

(3) Trade or service receivable

For purposes of this subsection, the term ''trade or service receivable'' means any account receivable or evidence of indebtedness arising out of—

(A) the disposition by a related person of property described in section 1221(a)(1), or

(B) the performance of services by a related person.

(4) Related person

For purposes of this subsection, the term ''related person'' means—

(A) any person who is a related person (within the meaning of section 267(b)), and

(B) any United States shareholder (as defined in section 951(b)) and any person who is a related person (within the meaning of section 267(b)) to such a shareholder.

(5) Certain provisions not to apply

The following provisions shall not apply to any amount treated as interest under paragraph (1) or (6):

(A) Section 904(d)(2)(B)(iii)(I) (relating to exceptions for export financing interest).

(B) Subparagraph (A) of section 954(b)(3) (relating to exception where foreign base company income is less than 5 percent or $1,000,000).

(C) Subparagraph (B) of section 954(c)(2) (relating to certain export financing).

(D) Clause (i) of section 954(c)(3)(A) (relating to certain income received from related persons).

(6) Special rule for certain income from loans of a controlled foreign corporation

Any income of a controlled foreign corporation (within the meaning of section 957(a)) from a loan to a person for the purpose of financing—

(A) the purchase of property described in section 1221(a)(1) of a related person, or

(B) the payment for the performance of services by a related person,

shall be treated as interest described in paragraph (1).

(7) Exception for certain related persons doing business in same foreign country

Paragraph (1) shall not apply to any trade or service receivable acquired by any person from a related person if—

(A) the person acquiring such receivable and such related person are created or organized under the laws of the same foreign country and such related person has a substantial part of its assets used in its trade or business located in such same foreign country, and

(B) such related person would not have derived any foreign base company income (as defined in section 954(a), determined without regard to section 954(b)(3)(A)), or any income effectively connected with the conduct of a trade or business within the United States, from such receivable if it had been collected by such related person.

(8) Regulations

The Secretary shall prescribe such regulations as may be necessary to prevent the avoidance of the provisions of this subsection or section 956(c)(3).

(e) Rules for allocating interest, etc.

For purposes of this subchapter—

(1) Treatment of affiliated groups

The taxable income of each member of an affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single corporation.

(2) Gross income and fair market value methods may not be used for interest

All allocations and apportionments of interest expense shall be determined using the adjusted bases of assets rather than on the basis of the fair market value of the assets or gross income.

(3) Tax-exempt assets not taken into account

For purposes of allocating and apportioning any deductible expense, any tax-exempt asset (and any income from such an asset) shall not be taken into account. A similar rule shall apply in the case of the portion of any dividend (other than a qualifying dividend as defined in section 243(b)) equal to the deduction allowable under section 243 or 245(a) with respect to such dividend and in the case of a like portion of any stock the dividends on which would be so deductible and would not be qualifying dividends (as so defined).

(4) Basis of stock in nonaffiliated 10-percent owned corporations adjusted for earnings and profits changes

(A) In general

For purposes of allocating and apportioning expenses on the basis of assets, the adjusted basis of any stock in a nonaffiliated 10-percent owned corporation shall be—

(i) increased by the amount of the earnings and profits of such corporation attributable to such stock and accumulated during the period the taxpayer held such stock, or

(ii) reduced (but not below zero) by any deficit in earnings and profits of such corporation attributable to such stock for such period.

(B) Nonaffiliated 10-percent owned corporation

For purposes of this paragraph, the term ''nonaffiliated 10-percent owned corporation'' means any corporation if—

(i) such corporation is not included in the taxpayer's affiliated group, and

(ii) members of such affiliated group own 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote.

(C) Earnings and profits of lower tier corporations taken into account

(i) In general

If, by reason of holding stock in a nonaffiliated 10-percent owned corporation, the taxpayer is treated under clause (iii) as owning stock in another corporation with respect to which the stock ownership requirements of clause (ii) are met, the adjustment under subparagraph (A) shall include an adjustment for the amount of the earnings and profits (or deficit therein) of such other corporation which are attributable to the stock the taxpayer is so treated as owning and to the period during which the taxpayer is treated as owning such stock.

(ii) Stock ownership requirements

The stock ownership requirements of this clause are met with respect to any corporation if members of the taxpayer's affiliated group own (directly or through the application of clause (iii)) 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote.

(iii) Stock owned through entities

For purposes of this subparagraph, stock owned (directly or indirectly) by a corporation, partnership, or trust shall be treated as being owned proportionately by its shareholders, partners, or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence, shall, for purposes of applying such sentence, be treated as actually owned by such person.

(D) Coordination with subpart F, etc.

For purposes of this paragraph, proper adjustment shall be made to the earnings and

profits of any corporation to take into account any earnings and profits included in gross income under section 951 or under any other provision of this title and reflected in the adjusted basis of the stock.

(5) Affiliated group

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), the term ''affiliated group'' has the meaning given such term by section 1504. Notwithstanding the preceding sentence, a foreign corporation shall be treated as a member of the affiliated group if—

(i) more than 50 percent of the gross income of such foreign corporation for the taxable year is effectively connected with the conduct of a trade or business within the United States, and

(ii) at least 80 percent of either the vote or value of all outstanding stock of such foreign corporation is owned directly or indirectly by members of the affiliated group (determined with regard to this sentence).

(B) Treatment of certain financial institutions

For purposes of subparagraph (A), any corporation described in subparagraph (C) shall be treated as an includible corporation for purposes of section 1504 only for purposes of applying such section separately to corporations so described. This subparagraph shall not apply for purposes of paragraph (6).

(C) Description

A corporation is described in this subparagraph if—

(i) such corporation is a financial institution described in section 581 or 591,

(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution.

(D) Treatment of bank holding companies

To the extent provided in regulations—

(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956), and

(ii) any subsidiary of a financial institution described in section 581 or 591 or of any bank holding company if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business,

shall be treated as a corporation described in subparagraph (C).

(6) Allocation and apportionment of other expenses

Expenses other than interest which are not directly allocable or apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation.

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing—

(A) for the resourcing of income of any member of an affiliated group or modifications to the consolidated return regulations to the extent such resourcing or modification is necessary to carry out the purposes of this section,

(B) for direct allocation of interest expense incurred to carry out an integrated financial transaction to any interest (or interest-type income) derived from such transaction and in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection,

(C) for the apportionment of expenses allocated to foreign source income among the members of the affiliated group and various categories of income described in section 904(d)(1),

(D) for direct allocation of interest expense in the case of indebtedness resulting in a disallowance under section 246A,

(E) for appropriate adjustments in the application of paragraph (3) in the case of an insurance company,

(F) preventing assets or interest expense from being taken into account more than once, and

(G) that this subsection shall not apply for purposes of any provision of this subchapter to the extent the Secretary determines that the application of this subsection for such purposes would not be appropriate.

(f) Election to allocate interest, etc. on worldwide basis

For purposes of this subchapter, at the election of the worldwide affiliated group—

(1) Allocation and apportionment of interest expense

(A) In general

The taxable income of each domestic corporation which is a member of a worldwide affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single corporation.

(B) Treatment of worldwide affiliated group

The taxable income of the domestic members of a worldwide affiliated group from sources outside the United States shall be determined by allocating and apportioning the interest expense of such domestic members to such income in an amount equal to the excess (if any) of—

(i) the total interest expense of the worldwide affiliated group multiplied by the ratio which the foreign assets of the worldwide affiliated group bears to all the assets of the worldwide affiliated group, over

(ii) the interest expense of all foreign corporations which are members of the worldwide affiliated group to the extent such interest expense of such foreign cor-

porations would have been allocated and apportioned to foreign source income if this subsection were applied to a group consisting of all the foreign corporations in such worldwide affiliated group.

(C) Worldwide affiliated group

For purposes of this paragraph, the term ''worldwide affiliated group'' means a group consisting of—

(i) the includible members of an affiliated group (as defined in section 1504(a), determined without regard to paragraph (2) of section 1504(b)), and

(ii) all controlled foreign corporations in which such members in the aggregate meet the ownership requirements of section 1504(a)(2) either directly or indirectly through applying paragraph (2) of section 958(a) or through applying rules similar to the rules of such paragraph to stock owned directly or indirectly by domestic partnerships, trusts, or estates.

(2) Allocation and apportionment of other expenses

Expenses other than interest which are not directly allocable or apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation. For purposes of the preceding sentence, the term ''affiliated group'' has the meaning given such term by section 1504 (determined without regard to paragraph (2) of section 1504(b)).

(3) Treatment of tax-exempt assets; basis of stock in nonaffiliated 10-percent owned corporations

The rules of paragraphs (3) and (4) of subsection (e) shall apply for purposes of this subsection, except that paragraph (4) shall be applied on a worldwide affiliated group basis.

(4) Treatment of certain financial institutions

(A) In general

For purposes of paragraph (1), any corporation described in subparagraph (B) shall be treated as an includible corporation for purposes of section 1504 only for purposes of applying this subsection separately to corporations so described.

(B) Description

A corporation is described in this subparagraph if—

(i) such corporation is a financial institution described in section 581 or 591,

(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution.

(C) Treatment of bank and financial holding companies

To the extent provided in regulations—

(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)),

(ii) a financial holding company (within the meaning of section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)), and

(iii) any subsidiary of a financial institution described in section 581 or 591, or of any such bank or financial holding company, if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business,

shall be treated as a corporation described in subparagraph (B).

(5) Election to expand financial institution group of worldwide group

(A) In general

If a worldwide affiliated group elects the application of this subsection, all financial corporations which—

(i) are members of such worldwide affiliated group, but

(ii) are not corporations described in paragraph (4)(B),

shall be treated as described in paragraph (4)(B) for purposes of applying paragraph (4)(A). This subsection (other than this paragraph) shall apply to any such group in the same manner as this subsection (other than this paragraph) applies to the pre-election worldwide affiliated group of which such group is a part.

(B) Financial corporation

For purposes of this paragraph, the term ''financial corporation'' means any corporation if at least 80 percent of its gross income is income described in section 904(d)(2)(D)(ii) and the regulations thereunder which is derived from transactions with persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the corporation. For purposes of the preceding sentence, there shall be disregarded any item of income or gain from a transaction or series of transactions a principal purpose of which is the qualification of any corporation as a financial corporation.

(C) Anti-abuse rules

In the case of a corporation which is a member of an electing financial institution group, to the extent that such corporation—

(i) distributes dividends or makes other distributions with respect to its stock after the date of the enactment of this paragraph to any member of the pre-election worldwide affiliated group (other than to a member of the electing financial institution group) in excess of the greater of—

(I) its average annual dividend (expressed as a percentage of current earnings and profits) during the 5-taxable-year period ending with the taxable year preceding the taxable year, or

(II) 25 percent of its average annual earnings and profits for such 5-taxable-year period, or

(ii) deals with any person in any manner not clearly reflecting the income of the

corporation (as determined under principles similar to the principles of section 482),

an amount of indebtedness of the electing financial institution group equal to the excess distribution or the understatement or overstatement of income, as the case may be, shall be recharacterized (for the taxable year and subsequent taxable years) for purposes of this paragraph as indebtedness of the worldwide affiliated group (excluding the electing financial institution group). If a corporation has not been in existence for 5 taxable years, this subparagraph shall be applied with respect to the period it was in existence.

(D) Election

An election under this paragraph with respect to any financial institution group may be made only by the common parent of the pre-election worldwide affiliated group and may be made only for the first taxable year beginning after December 31, 2020, in which such affiliated group includes 1 or more financial corporations. Such an election, once made, shall apply to all financial corporations which are members of the electing financial institution group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

(E) Definitions relating to groups

For purposes of this paragraph—

(i) Pre-election worldwide affiliated group

The term ''pre-election worldwide affiliated group'' means, with respect to a corporation, the worldwide affiliated group of which such corporation would (but for an election under this paragraph) be a member for purposes of applying paragraph (1).

(ii) Electing financial institution group

The term ''electing financial institution group'' means the group of corporations to which this subsection applies separately by reason of the application of paragraph (4)(A) and which includes financial corporations by reason of an election under subparagraph (A).

(F) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations—

(i) providing for the direct allocation of interest expense in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection,

(ii) preventing assets or interest expense from being taken into account more than once, and

(iii) dealing with changes in members of any group (through acquisitions or otherwise) treated under this paragraph as an affiliated group for purposes of this subsection.

(6) Election

An election to have this subsection apply with respect to any worldwide affiliated group may be made only by the common parent of the domestic affiliated group referred to in paragraph (1)(C) and may be made only for the first taxable year beginning after December 31, 2020, in which a worldwide affiliated group exists which includes such affiliated group and at least 1 foreign corporation. Such an election, once made, shall apply to such common parent and all other corporations which are members of such worldwide affiliated group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

(g) Allocation of research and experimental expenditures

(1) In general

For purposes of sections 861(b), 862(b), and 863(b), qualified research and experimental expenditures shall be allocated and apportioned as follows:

(A) Any qualified research and experimental expenditures expended solely to meet legal requirements imposed by a political entity with respect to the improvement or marketing of specific products or processes for purposes not reasonably expected to generate gross income (beyond de minimis amounts) outside the jurisdiction of the political entity shall be allocated only to gross income from sources within such jurisdiction.

(B) In the case of any qualified research and experimental expenditures (not allocated under subparagraph (A)) to the extent—

(i) that such expenditures are attributable to activities conducted in the United States, 50 percent of such expenditures shall be allocated and apportioned to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States, and

(ii) that such expenditures are attributable to activities conducted outside the United States, 50 percent of such expenditures shall be allocated and apportioned to income from sources outside the United States and deducted from such income in determining the amount of taxable income from sources outside the United States.

(C) The remaining portion of qualified research and experimental expenditures (not allocated under subparagraphs (A) and (B)) shall be apportioned, at the annual election of the taxpayer, on the basis of gross sales or gross income, except that, if the taxpayer elects to apportion on the basis of gross income, the amount apportioned to income from sources outside the United States shall at least be 30 percent of the amount which would be so apportioned on the basis of gross sales.

(2) Qualified research and experimental expenditures

For purposes of this section, the term ''qualified research and experimental expenditures'' means amounts which are research and experimental expenditures within the meaning

of section 174. For purposes of this paragraph, rules similar to the rules of subsection (c)[2] of section 174 shall apply. Any qualified research and experimental expenditures treated as deferred expenses under subsection (b)[2] of section 174 shall be taken into account under this subsection for the taxable year for which such expenditures are allowed as a deduction under such subsection.

(3) Special rules for expenditures attributable to activities conducted in space, etc.

(A) In general

Any qualified research and experimental expenditures described in subparagraph (B)—

(i) if incurred by a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted in the United States, and

(ii) if incurred by a person other than a United States person, shall be allocated and apportioned under this section in the same manner as if they were attributable to activities conducted outside the United States.

(B) Description of expenditures

For purposes of subparagraph (A), qualified research and experimental expenditures are described in this subparagraph if such expenditures are attributable to activities conducted—

(i) in space,

(ii) on or under water not within the jurisdiction (as recognized by the United States) of a foreign country, possession of the United States, or the United States, or

(iii) in Antarctica.

(4) Affiliated group

(A) Except as provided in subparagraph (B), the allocation and apportionment required by paragraph (1) shall be determined as if all members of the affiliated group (as defined in subsection (e)(5)) were a single corporation.

(B) For purposes of the allocation and apportionment required by paragraph (1)—

(i) sales and gross income from products produced in whole or in part in a possession by an electing corporation (within the meaning of section 936(h)(5)(E)),[2] and

(ii) dividends from an electing corporation,

shall not be taken into account, except that this subparagraph shall not apply to sales of (and gross income and dividends attributable to sales of) products with respect to which an election under section 936(h)(5)(F)[2] is not in effect.

(C) The qualified research and experimental expenditures taken into account for purposes of paragraph (1) shall be adjusted to reflect the amount of such expenditures included in computing the cost-sharing amount (determined under section 936(h)(5)(C)(i)(I)).[2]

(D) The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations providing for the source of gross income and the allocation and apportionment of deductions to take into account the adjustments required by subparagraph (B) or (C).

(E) Paragraph (6) of subsection (e) shall not apply to qualified research and experimental expenditures.

(5) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including regulations relating to the determination of whether any expenses are attributable to activities conducted in the United States or outside the United States and regulations providing such adjustments to the provisions of this subsection as may be appropriate in the case of cost-sharing arrangements and contract research.

(6) Applicability

This subsection shall apply to the taxpayer's first taxable year (beginning on or before August 1, 1994) following the taxpayer's last taxable year to which Revenue Procedure 92–56 applies or would apply if the taxpayer elected the benefits of such Revenue Procedure.

(Aug. 16, 1954, ch. 736, 68A Stat. 278; Pub. L. 89–809, title I, § 102(d), Nov. 13, 1966, 80 Stat. 1544; Pub. L. 94–455, title XIX, § 1901(a)(113), Oct. 4, 1976, 90 Stat. 1783; Pub. L. 98–369, div. A, title I, §§ 123(a), 127(c), July 18, 1984, 98 Stat. 644, 651; Pub. L. 99–514, title XII, §§ 1201(d)(4), 1211(b)(2), 1215(a), (b)(1), 1221(a)(2), 1223(b)(1), 1242(a), (b), 1275(c)(7), title XVIII, §§ 1810(c)(2), (3), 1899A(21), Oct. 22, 1986, 100 Stat. 2525, 2536, 2544, 2545, 2550, 2558, 2580, 2599, 2824, 2959; Pub. L. 100–203, title X, § 10242(b), Dec. 22, 1987, 101 Stat. 1330–423; Pub. L. 100–647, title I, § 1012(a)(1)(B), (d)(7), (10), (g)(5), (h)(1), (2)(A), (3)–(6), (p)(30), (r), Nov. 10, 1988, 102 Stat. 3494, 3498, 3499, 3501–3503, 3521, 3525; Pub. L. 101–239, title VII, § 7111, Dec. 19, 1989, 103 Stat. 2326; Pub. L. 101–508, title XI, § 11401(a), Nov. 5, 1990, 104 Stat. 1388–472; Pub. L. 102–227, title I, § 101(a), Dec. 11, 1991, 105 Stat. 1686; Pub. L. 103–66, title XIII, § 13234, Aug. 10, 1993, 107 Stat. 504; Pub. L. 105–34, title XI, § 1162(a), Aug. 5, 1997, 111 Stat. 987; Pub. L. 106–170, title V, § 532(c)(2)(N)–(P), Dec. 17, 1999, 113 Stat. 1931; Pub. L. 106–519, § 4(3), Nov. 15, 2000, 114 Stat. 2432; Pub. L. 108–357, title I, § 101(b)(6), title IV, §§ 401(a), (b), 403(b)(6), 413(c)(12), title VIII, § 894(a), Oct. 22, 2004, 118 Stat. 1423, 1488, 1491, 1494, 1507, 1647; Pub. L. 110–289, div. C, title III, § 3093(a), (b), July 30, 2008, 122 Stat. 2912; Pub. L. 111–92, § 15(a), (b), Nov. 6, 2009, 123 Stat. 2996; Pub. L. 111–147, title V, § 551(a), Mar. 18, 2010, 124 Stat. 117; Pub. L. 111–226, title II, § 216(a), Aug. 10, 2010, 124 Stat. 2400; Pub. L. 111–240, title II, § 2122(c), Sept. 27, 2010, 124 Stat. 2568; Pub. L. 115–97, title I, §§ 13501(a), 14502(a), Dec. 22, 2017, 131 Stat. 2138, 2235; Pub. L. 115–141, div. U, title IV, § 401(a)(152), (d)(1)(D)(x), (xvii)(IV), (V), Mar. 23, 2018, 132 Stat. 1191, 1207, 1208.)

REFERENCES IN TEXT

Section 2(a) of the Bank Holding Company Act of 1956, referred to in subsec. (e)(5)(D)(i), is classified to section 1841(a) of Title 12, Banks and Banking.

The date of the enactment of this paragraph, referred to in subsec. (f)(5)(C)(i), is the date of enactment of Pub. L. 108–357, which was approved Oct. 22, 2004.

[2] See References in Text note below.

Section 174, referred to in subsec. (g)(2), was amended generally by Pub. L. 115–97, title I, §13206(a), Dec. 22, 2017, 131 Stat. 2111. Provisions similar to those contained in former subsec. (c) of section 174 are now contained in subsec. (c)(1) of section 174. For provisions similar to those contained in former subsec. (b) of section 174 relating to amortization of certain research and experimental expenditures, see subsecs. (a) and (b) of section 174.

Section 936, referred to in subsec. (g)(4)(B), (C), was repealed by Pub. L. 115–141, div. U, title IV, §401(d)(1)(C), Mar. 23, 2018, 132 Stat. 1206.

AMENDMENTS

2018—Subsec. (d)(5). Pub. L. 115–141, §401(d)(1)(D)(x), amended par. (5) generally. Prior to amendment, par. (5) related to certain provisions that did not apply to any amount treated as interest under par. (1) or (6).

Subsec. (d)(8). Pub. L. 115–141, §401(a)(152), substituted ''section 956(c)(3)'' for ''section 956(b)(3)''.

Subsec. (e)(5)(A). Pub. L. 115–141, §401(d)(1)(D)(xvii)(IV), struck out ''(determined without regard to paragraph (4) of section 1504(b))'' after ''section 1504'' in introductory provisions.

Subsec. (f)(1)(C)(i). Pub. L. 115–141, §401(d)(1)(D)(xvii)(V), substituted ''paragraph (2)'' for ''paragraphs (2) and (4)''.

Subsec. (f)(2). Pub. L. 115–141, §401(d)(1)(D)(xvii)(V), which directed amendment of par. (2) by substituting ''paragraph (2)'' for ''paragraphs (2) and (4)'', was executed by making the substitution for ''paragraph (4)'', to reflect the probable intent of Congress.

2017—Subsec. (c)(1)(A). Pub. L. 115–97, §13501(a)(2)(A), substituted ''(7), and (8)'' for ''and (7)''.

Subsec. (c)(1)(B). Pub. L. 115–97, §13501(a)(2)(B), substituted ''(7), or (8)'' for ''or (7)''.

Subsec. (c)(8). Pub. L. 115–97, §13501(a)(1), added par. (8).

Subsec. (e)(2). Pub. L. 115–97, §14502(a), amended par. (2) generally. Prior to amendment, text read as follows: ''All allocations and apportionments of interest expense shall be made on the basis of assets rather than gross income.''

2010—Subsec. (c)(4)(B)(ii). Pub. L. 111–240 substituted ''dividends, interest, or amounts received for the provision of guarantees of indebtedness'' for ''dividends or interest''.

Subsec. (e)(5)(A). Pub. L. 111–226 inserted at end ''Notwithstanding the preceding sentence, a foreign corporation shall be treated as a member of the affiliated group if—'' and added cls. (i) and (ii).

Subsec. (f)(5)(D), (6). Pub. L. 111–147 substituted ''December 31, 2020'' for ''December 31, 2017''.

2009—Subsec. (f)(5)(D), (6). Pub. L. 111–92, §15(a), substituted ''December 31, 2017'' for ''December 31, 2010''.

Subsec. (f)(7). Pub. L. 111–92, §15(b), struck out par. (7). Text read as follows: ''In the case of the first taxable year to which this subsection applies, the increase (if any) in the amount of the interest expense allocable to sources within the United States by reason of the application of this subsection shall be 30 percent of the amount of such increase determined without regard to this paragraph.''

2008—Subsec. (f)(5)(D), (6). Pub. L. 110–289, §3093(a), substituted ''December 31, 2010'' for ''December 31, 2008''.

Subsec. (f)(7). Pub. L. 110–289, §3093(b), added par. (7).

2004—Subsec. (c)(4)(B). Pub. L. 108–357, §894(a), added concluding provisions.

Subsec. (d)(2). Pub. L. 108–357, §413(c)(12), redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) which read as follows: ''Part III of subchapter G of this chapter (relating to foreign personal holding companies).''

Subsec. (d)(5)(A)(i). Pub. L. 108–357, §403(b)(6), substituted ''(C)(iii)(II)'' for ''(C)(iii)(III)''.

Subsec. (e)(3). Pub. L. 108–357, §101(b)(6), struck out ''(A) In general'' before ''For purposes'' and struck out heading and text of subpar. (B). Text read as follows: ''For purposes of allocating and apportioning any interest expense, there shall not be taken into account any qualifying foreign trade property (as defined in section 943(a)) which is held by the taxpayer for lease or rental in the ordinary course of trade or business for use by the lessee outside the United States (as defined in section 943(b)(2)).''

Subsec. (e)(7)(B). Pub. L. 108–357, §401(b)(1), inserted ''and in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection'' before comma at end.

Subsec. (e)(7)(F), (G). Pub. L. 108–357, §401(b)(2), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsecs. (f), (g). Pub. L. 108–357, §401(a), added subsec. (f) and redesignated former subsec. (f) as (g).

2000—Subsec. (e)(3). Pub. L. 106–519 designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

1999—Subsecs. (c)(4)(B)(iii), (d)(3)(A), (6)(A). Pub. L. 106–170 substituted ''section 1221(a)(1)'' for ''section 1221(1)''.

1997—Subsec. (b)(2)(A)(ii). Pub. L. 105–34 struck out '', or in the case of a corporation (other than a corporation which is, or but for section 542(c)(7), 542(c)(10), or 543(b)(1)(C) would be, a personal holding company) the principal business of which is trading in stocks or securities for its own account, if its principal office is in the United States'' after ''dealer in stocks or securities''.

1993—Subsec. (f)(1)(B). Pub. L. 103–66, §13234(a), substituted ''50 percent'' for ''64 percent'' in cls. (i) and (ii).

Subsec. (f)(4)(D). Pub. L. 103–66, §13234(b)(2), substituted ''subparagraph (B) or (C)'' for ''subparagraph (C)''.

Subsec. (f)(5), (6). Pub. L. 103–66, §13234(b)(1), added pars. (5) and (6) and struck out heading and text of former par. (5). Text read as follows:

''(A) IN GENERAL.—This subsection shall apply to the taxpayer's first 3 taxable years beginning after August 1, 1989, and on or before August 1, 1992.

''(B) REDUCTION.—Notwithstanding subparagraph (A), in the case of the taxpayer's first taxable year beginning after August 1, 1991, this subsection shall only apply to qualified research and experimental expenditures incurred during the first 6 months of such taxable year.''

1991—Subsec. (f)(5). Pub. L. 102–227 amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''This subsection shall apply to the taxpayer's first 2 taxable years beginning after August 1, 1989, and on or before August 1, 1991.''

1990—Subsec. (f)(5). Pub. L. 101–508 substituted ''Years'' for ''Year'' in heading and amended text generally. Prior to amendment, text read as follows:

''(A) IN GENERAL.—Except as provided in this paragraph, this subsection shall apply to the taxpayer's first taxable year beginning after August 1, 1989, and before August 2, 1990.

''(B) REDUCTION.—Notwithstanding subparagraph (A), this subsection shall only apply to that portion of the qualified research and experimental expenditures for the taxable year referred to in subparagraph (A) which bears the same ratio to the total amount of such expenditures as—

''(i) the lesser of 9 months or the number of months in the taxable year, bears to

''(ii) the number of months in the taxable year.''

1989—Subsec. (f). Pub. L. 101–239 added subsec. (f).

1988—Subsec. (b)(2)(A)(ii). Pub. L. 100–647, §1012(p)(30), substituted ''section 542(c)(7), 542(c)(10),'' for ''section 542(c)(7)''.

Subsec. (c)(2). Pub. L. 100–647, §1012(g)(5), struck out at end ''In applying this paragraph and paragraph (4), interest referred to in section 861(a)(1)(A) shall be considered income from sources within the United States.''

Subsec. (c)(4)(B)(i), (ii). Pub. L. 100–647, §1012(d)(10), struck out ''(including any gain or loss realized on the sale or exchange of such property)'' after ''section 862(a)(4)'' in cl. (i) and '', or gain or loss from the sale or exchange of stock or notes, bonds, or other evidences of indebtedness'' after ''dividends or interest'' in cl. (ii).

Subsec. (c)(4)(B)(iii). Pub. L. 100–647, §1012(d)(7), added cl. (iii).

Subsec. (c)(6). Pub. L. 100–647, §1012(r)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''For purposes of this title, any income or gain of a nonresident alien individual or a foreign corporation for any taxable year which is attributable to a sale or exchange of property or the performance of services (or any other transaction) in any other taxable year shall be treated as effectively connected with the conduct of a trade or business within the United States if it would have been so treated if such income or gain were taken into account in such other taxable year.''

Subsec. (c)(7). Pub. L. 100–647, §1012(r)(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''For purposes of this title, if any property ceases to be used or held for use in connection with the conduct of a trade or business within the United States, the determination of whether any income or gain attributable to a sale or exchange of such property occurring within 10 years after such cessation is effectively connected with the conduct of a trade or business within the United States shall be made as if such sale or exchange occurred immediately before such cessation.''

Subsec. (d)(5)(A)(i). Pub. L. 100–647, §1012(a)(1)(B), substituted ''(C)(iii)(III)'' for ''(C)(iii)''.

Subsec. (e). Pub. L. 100–647, §1012(h)(6)(B), struck out ''(except as provided in regulations)'' after ''subchapter''.

Subsec. (e)(1). Pub. L. 100–647, §1012(h)(2)(A), struck out ''from sources outside the United States'' after ''affiliated group''.

Subsec. (e)(3). Pub. L. 100–647, §1012(h)(3), inserted sentence at end and struck out former last sentence which read as follows: ''A similar rule shall apply in the case of any dividend (other than a qualifying dividend as defined in section 243(b)) for which a deduction is allowable under section 243 or 245(a) and any stock the dividends on which would be so deductible and would not be qualifying dividends (as so defined).''

Subsec. (e)(4). Pub. L. 100–647, §1012(h)(1), substituted ''nonaffiliated 10-percent owned corporations'' for ''certain corporations'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of allocating and apportioning expenses on the basis of assets, the adjusted basis of any asset which is stock in a corporation which is not included in the affiliated group and in which members of the affiliated group own 10 percent or more of the total combined voting power of all classes of stock entitled to vote in such corporation shall be—

''(A) increased by the amount of the earnings and profits of such corporation attributable to such stock and accumulated during the period the taxpayer held such stock, or

''(B) reduced (but not below zero) by any deficit in earnings and profits of such corporation attributable to such stock for such period.''

Subsec. (e)(5)(B). Pub. L. 100–647, §1012(h)(4)(B), inserted at end ''This subparagraph shall not apply for purposes of paragraph (6).''

Subsec. (e)(5)(D). Pub. L. 100–647, §1012(h)(4)(A), added subpar. (D).

Subsec. (e)(6). Pub. L. 100–647, §1012(h)(5), substituted ''directly allocable or apportioned'' for ''directly allocable and apportioned''.

Subsec. (e)(7)(D) to (F). Pub. L. 100–647, §1012(h)(6)(A), added subpars. (D) to (F).

1987—Subsec. (c)(4)(C). Pub. L. 100–203 inserted ''or part II'' after ''part I''.

1986—Pub. L. 99–514, §1215(b)(1), inserted ''and special rules'' in section catchline.

Subsec. (c)(1)(A). Pub. L. 99–514, §1242(b)(1), inserted reference to pars. (6) and (7).

Subsec. (c)(1)(B). Pub. L. 99–514, §1242(b)(2), inserted ''paragraph (6) or (7) or in''.

Subsec. (c)(2). Pub. L. 99–514, §1899A(21), inserted a comma between ''section 871(h)'' and ''section 881(a)''.

Subsec. (c)(4)(B)(iii). Pub. L. 99–514, §1211(b)(2), struck out cl. (iii), which read as follows: ''is derived from the sale or exchange (without the United States) through such office or other fixed place of business of personal property described in section 1221(1), except that this clause shall not apply if the property is sold or exchanged for use, consumption, or disposition outside the United States and an office or other fixed place of business of the taxpayer outside the United States participated materially in such sale or exchange.''

Subsec. (c)(6), (7). Pub. L. 99–514, §1242(a), added pars. (6) and (7).

Subsec. (d)(5)(A)(i). Pub. L. 99–514, §1201(d)(4), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''Subparagraphs (A), (B), (C), and (D) of section 904(d)(2) (relating to interest income to which separate limitation applies) and subparagraph (J) of section 904(d)(3) (relating to interest from members of same affiliated group).''

Pub. L. 99–514, §1810(c)(3), inserted ''and subparagraph (J) of section 904(d)(3) (relating to interest from members of same affiliated group)''.

Subsec. (d)(5)(A)(ii). Pub. L. 99–514, §1223(b)(1), substituted ''less than 5 percent or $1,000,000'' for ''less than 10 percent''.

Subsec. (d)(5)(A)(iii). Pub. L. 99–514, §1221(a)(2), amended cl. (iii) generally, substituting ''section 954(c)(2) (relating to certain export financing)'' for ''section 954(c)(3) (relating to certain income derived in active conduct of trade or business)''.

Subsec. (d)(5)(A)(iv). Pub. L. 99–514, §1221(a)(2), amended cl. (iv) generally, substituting ''Clause (i) of section 954(c)(3)(A) (relating to'' for ''Subparagraphs (A) and (B) of section 954(c)(4) (relating to exception for''.

Subsec. (d)(5)(B). Pub. L. 99–514, §1275(c)(7), amended subpar. (B) generally, striking out cl. (i) heading, substituting ''An amount'' for ''Any amount'', and striking out cl. (ii), Virgin Islands corporations, which read as follows: ''Subsection (b) of section 934 shall not apply to any amount treated as interest under paragraph (1) unless such amount is from sources within the Virgin Islands (determined after the application of paragraph (1)).''

Subsec. (d)(7), (8). Pub. L. 99–514, §1810(c)(2), added par. (7) and redesignated former par. (7) as (8).

Subsec. (e). Pub. L. 99–514, §1215(a), added subsec. (e).

1984—Subsec. (c)(2). Pub. L. 98–369, §127(c), substituted ''section 871(a)(1), section 871(h) section 881(a), or section 881(c)'' for ''section 871(a)(1) or section 881(a)''.

Subsec. (d). Pub. L. 98–369, §123(a), added subsec. (d).

1976—Subsec. (a). Pub. L. 94–455, §1901(a)(113)(A), substituted in heading ''Produced'' for ''Sale, etc.'' and struck out in text provisions relating to the definition of sale and sold.

Subsec. (c)(4)(B)(i). Pub. L. 94–455, §1901(a)(113)(B), substituted ''sale or exchange'' for ''sale''.

Subsec. (c)(4)(B)(iii). Pub. L. 94–455, §1901(a)(113)(B), (C), substituted ''sold or exchanged'' for ''sold'' and ''sale or exchange'' for ''sale'' wherever appearing.

Subsec. (c)(5)(C). Pub. L. 94–455, §1901(a)(113)(B), substituted ''sale or exchange'' for ''sale'' wherever appearing.

1966—Pub. L. 89–809 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115–97, title I, §13501(c)(1), Dec. 22, 2017, 131 Stat. 2141, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to sales, exchanges, and dispositions on or after November 27, 2017.''

Pub. L. 115–97, title I, §14502(b), Dec. 22, 2017, 131 Stat. 2235, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.''

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–240 applicable to guarantees issued after Sept. 27, 2010, see section 2122(d) of Pub. L. 111–240, set out as a note under section 861 of this title.

Pub. L. 111–226, title II, § 216(b), Aug. 10, 2010, 124 Stat. 2400, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 10, 2010].''

Pub. L. 111–147, title V, § 551(b), Mar. 18, 2010, 124 Stat. 117, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Mar. 18, 2010].''

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111–92, § 15(c), Nov. 6, 2009, 123 Stat. 2996, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2010.''

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, div. C, title III, § 3093(c), July 30, 2008, 122 Stat. 2912, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 101(b)(6) of Pub. L. 108–357 applicable to transactions after Dec. 31, 2004, see section 101(c) of Pub. L. 108–357, set out as a note under section 56 of this title.

Pub. L. 108–357, title IV, § 401(c), Oct. 22, 2004, 118 Stat. 1491, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.''

Pub. L. 108–357, title IV, § 403(c), Oct. 22, 2004, 118 Stat. 1494, provided that: ''The amendments made by this section [amending this section and section 904 of this title] shall apply to taxable years beginning after December 31, 2002.''

Pub. L. 108–357, title IV, § 403(d), as added by Pub. L. 109–135, title IV, § 403(*l*), Dec. 21, 2005, 119 Stat. 2625, provided that: ''If the taxpayer elects (at such time and in such form and manner as the Secretary of the Treasury may prescribe) to have the rules of this subsection apply—

''(1) the amendments made by this section [amending this section and section 904 of this title] shall not apply to taxable years beginning after December 31, 2002, and before January 1, 2005, and

''(2) in the case of taxable years beginning after December 31, 2004, clause (iv) of section 904(d)(4)(C) of the Internal Revenue Code of 1986 (as amended by this section) shall be applied by substituting 'January 1, 2005' for 'January 1, 2003' both places it appears.''

[Amendment by Pub. L. 109–135 adding section 403(d) of Pub. L. 108–357, set out above, effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as an Effective Date of 2005 Amendment note under section 26 of this title.]

Amendment by section 413(c)(12) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–357, title VIII, § 894(b), Oct. 22, 2004, 118 Stat. 1647, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–519 applicable to transactions after Sept. 30, 2000, with special rules relating to existing foreign sales corporations, see section 5 of Pub. L. 106–519, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title XI, § 1162(b), Aug. 5, 1997, 111 Stat. 987, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102–227, title I, § 101(b), Dec. 11, 1991, 105 Stat. 1686, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after August 1, 1989.''

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, § 11401(b), Nov. 5, 1990, 104 Stat. 1388–472, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after August 1, 1989.''

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 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to taxable years beginning after Dec. 31, 1987, see section 10242(d) of Pub. L. 100–203, set out as a note under section 816 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1201(d)(4) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1201(e) of Pub. L. 99–514, set out as a note under section 904 of this title.

Amendment by section 1211(b)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1211(c) of Pub. L. 99–514, set out as an Effective Date note under section 865 of this title.

Pub. L. 99–514, title XII, § 1215(c), Oct. 22, 1986, 100 Stat. 2545, as amended by Pub. L. 100–647, title I, § 1012(h)(7), Nov. 10, 1988, 102 Stat. 3504; Pub. L. 104–191, title V, § 521(a), Aug. 21, 1996, 110 Stat. 2103, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) TRANSITIONAL RULES.—

''(A) GENERAL PHASE-IN.—

''(i) IN GENERAL.—In the case of the 1st 3 taxable years of the taxpayer beginning after December 31, 1986, the amendments made by this section shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the general phase-in amount.

''(ii) GENERAL PHASE-IN AMOUNT.—Except as provided in clause (iii), the general phase-in amount for purposes of clause (i) is the applicable percentage (determined under the following table) of the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985:

''In the case of the:	**The applicable percentage is:**
1st taxable year	75
2nd taxable year	50

3rd taxable year ..... 25.

''(iii) LOWER LIMIT WHERE TAXPAYER REDUCES INDEBTEDNESS.—For purposes of applying this subparagraph to interest expenses attributable to any month, the general phase-in amount shall in no event exceed the lowest amount of indebtedness of the taxpayer outstanding as of the close of any preceding month beginning after November 16, 1985. To the extent provided in regulations, the average amount of indebtedness outstanding during any month shall be used (in lieu of the amount outstanding as of the close of such month) for purposes of the preceding sentence.

''(B) CONSOLIDATION RULE NOT TO APPLY TO CERTAIN INTEREST.—

''(i) IN GENERAL.—In the case of the 1st 5 taxable years of the taxpayer beginning after December 31, 1986—

''(I) subparagraph (A) shall not apply for purposes of paragraph (1) of section 864(e) of the Internal Revenue Code of 1986 (as added by this section), but

''(II) such paragraph (1) shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the special phase-in amount.

''(ii) SPECIAL PHASE-IN AMOUNT.—The special phase-in amount for purposes of clause (i) is the sum of—

''(I) the general phase-in amount as determined for purposes of subparagraph (A),

''(II) the 5-year phase-in amount, and

''(III) the 4-year phase-in amount.

For purposes of applying this subparagraph to interest expense attributable to any month, the special phase-in amount shall in no event exceed the limitation determined under subparagraph (A)(iii).

''(iii) 5-YEAR PHASE-IN AMOUNT.—The 5-year phase-in amount is the lesser of—

''(I) the applicable percentage (determined under the following table for purposes of this subclause) of the 5-year debt amount, or

''(II) the applicable percentage (determined under the following table for purposes of this subclause) of the 5-year debt amount reduced by paydowns:

"In the case of the:	The applicable percentage for purposes of subclause (I) is:	The applicable percentage for purposes of subclause (II) is:
1st taxable year	8⅓	10
2nd taxable year ...	16⅔	25
3rd taxable year	25	50
4th taxable year ...	33⅓	100
5th taxable year ...	16⅔	100.

''(iv) 4-YEAR PHASE-IN AMOUNT.—The 4-year phase-in amount is the lesser of—

''(I) the applicable percentage (determined under the following table for purposes of this subclause) of the 4-year debt amount, or

''(II) the applicable percentage (determined under the following table for purposes of this subclause) of the 4-year debt amount reduced by paydowns to the extent such paydowns exceed the 5-year debt amount:

"In the case of the:	The applicable percentage for purposes of subclause (I) is:	The applicable percentage for purposes of subclause (II) is:
1st taxable year	5	6¼
2nd taxable year ...	10	16⅔
3rd taxable year	15	37½
4th taxable year ...	20	100
5th taxable year ...	0	0.

''(v) 5-YEAR DEBT AMOUNT.—The term '5-year debt amount' means the excess (if any) of—

''(I) the amount of the outstanding indebtedness of the taxpayer on May 29, 1985, over

''(II) the amount of the outstanding indebtedness of the taxpayer as of the close of December 31, 1983.

The 5-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985.

''(vi) 4-YEAR DEBT AMOUNT.—The term '4-year debt amount' means the excess (if any) of—

''(I) the amount referred to in clause (v)(II), over

''(II) the amount of the outstanding indebtedness of the taxpayer as of the close of December 31, 1982.

The 4-year debt amount shall not exceed the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, reduced by the 5-year debt amount.

''(vii) PAYDOWNS.—For purposes of applying this subparagraph to interest expenses attributable to any month, the term 'paydowns' means the excess (if any) of—

''(I) the aggregate amount of indebtedness of the taxpayer outstanding on November 16, 1985, over

''(II) the lowest amount of indebtedness of the taxpayer outstanding as of the close of any preceding month beginning after November 16, 1985 (or, to the extent provided in regulations under subparagraph (A)(iii), the average amount of indebtedness outstanding during any such month).

''(C) COORDINATION OF SUBPARAGRAPHS (A) AND (B).—In applying subparagraph (B), there shall first be taken into account indebtedness to which subparagraph (A) applies.

''(D) SPECIAL RULES.—

''(i) In the case of the 1st 9 taxable years of the taxpayer beginning after December 31, 1986, the amendments made by this section shall not apply to interest expenses paid or accrued by the taxpayer during the taxable year with respect to an aggregate amount of indebtedness which does not exceed the applicable percentage (determined under the following table) of the indebtedness described in clause (iii) or (iv):

"In the case of the:	The applicable percentage is:
1st taxable year	90
2nd taxable year	80
3rd taxable year	70
4th taxable year	60
5th taxable year	50
6th taxable year	40
7th taxable year	30
8th taxable year	20
9th taxable year	10.

''(ii) The provisions of this subparagraph shall apply in lieu of the provisions of subparagraphs (A) and (B).

''(iii) INDEBTEDNESS OUTSTANDING ON MAY 29, 1985.—Indebtedness is described in this clause if it is indebtedness (which was outstanding on May 29, 1985) of a corporation incorporated on June 13, 1917, which has its principal place of business in Bartlesville, Oklahoma.

''(iv) INDEBTEDNESS OUTSTANDING ON MAY 29, 1985.—Indebtedness is described in this clause if it is indebtedness (which was outstanding on May 29, 1985) of a member of an affiliated group (as defined in section 1504(a) [of the Internal Revenue Code of 1986]), the common parent of which was incorporated on August 26, 1926, and has its principal place of business in Harrison, New York.

''(E) TREATMENT OF AFFILIATED GROUP.—For purposes of this paragraph, all members of the same affiliated group of corporations (as defined in section 864(e)(5)(A) of the Internal Revenue Code of 1986, as

added by this section) shall be treated as 1 taxpayer whether or not such members filed a consolidated return.

''(F) ELECTION TO HAVE PARAGRAPH NOT APPLY.—A taxpayer may elect (at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe) to have this paragraph not apply. In the case of members of the same affiliated group (as so defined), such an election may be made only if each member consents to such election.

''(3) SPECIAL RULE.—

''(A) IN GENERAL.—In the case of a qualified corporation, in lieu of applying paragraph (2), the amendments made by this section shall not apply to interest expenses allocable to any indebtedness to the extent such indebtedness does not exceed $500,000,000 if—

''(i) the indebtedness was incurred to develop or improve existing property that is owned by the taxpayer on November 16, 1985, and was acquired with the intent to develop or improve the property,

''(ii) the loan agreement with respect to the indebtedness provides that the funds are to be utilized for purposes of developing or improving the above property, and

''(iii) the debt to equity ratio of the companies that join in the filing of the consolidated return is less than 15 percent.

''(B) QUALIFIED CORPORATION.—For purposes of subparagraph (A), the term 'qualified corporation' means a corporation—

''(i) which was incorporated in Delaware on June 29, 1964,

''(ii) the principal subsidiary of which is a resident of Arkansas, and

''(iii) which is a member of an affiliated group the average daily United States production of oil of which is less than 50,000 barrels and the average daily United States refining of which is less than 150,000 barrels.

''(4) SPECIAL RULES FOR SUBSIDIARY.—The amendments made by this section shall not apply to interest on up to the applicable dollar amount of indebtedness of a subsidiary incorporated on February 11, 1975, the indebtedness of which on May 6, 1986, included—

''(A) $100,000,000 face amount of 11¾ percent notes due in 1990,

''(B) $100,000,000 of 8¾ percent notes due in 1989,

''(C) 6¾ percent Japanese yen notes due in 1991, and

''(D) 5⅜ percent Swiss franc bonds due in 1994.

For purposes of this paragraph, the term 'applicable dollar amount' means $600,000,000 in the case of taxable years beginning in 1987 through 1991, $500,000,000 in the case of the taxable year beginning in 1992, $400,000,000 in the case of the taxable year beginning in 1993, $300,000,000 in the case of the taxable year beginning in 1994, $200,000,000 in the case of the taxable year beginning in 1995, $100,000,000 in the case of the taxable year beginning in 1996, and zero in the case of taxable years beginning after 1996.

''[(5) Repealed. Pub. L. 104–191, title V, §521(a), Aug. 21, 1996, 110 Stat. 2103.]

''(6) SPECIAL RULES FOR ALLOCATING GENERAL AND ADMINISTRATIVE EXPENSES.—

''(A) IN GENERAL.—In the case of an affiliated group of domestic corporations the common parent of which has its principal office in New Brunswick, New Jersey, and has a certificate of organization which was filed with the Secretary of the State of New Jersey on November 10, 1887, the amendments made by this section shall not apply to the phase-in percentage of general and administrative expenses paid or incurred in its 1st 3 taxable years beginning after December 31, 1986.

''(B) PHASE-IN PERCENTAGE.—For purposes of subparagraph (A):

"In the case of taxable years beginning in:	The phase-in percentage is:
1987	75
1988	50
1989	25.''

[Pub. L. 104–191, title V, §521(b), Aug. 21, 1996, 110 Stat. 2103, provided that:

[''(1) IN GENERAL.—The amendment made by this section [amending section 1215(c) of Pub. L. 99–514, set out above] shall apply to taxable years beginning after December 31, 1995.

[''(2) SPECIAL RULE.—In the case of the first taxable year beginning after December 31, 1995, the pre-effective date portion of the interest expense of the corporation referred to in such paragraph (5) of such section 1215(c) [of Pub. L. 99–514] for such taxable year shall be allocated and apportioned without regard to such amendment. For purposes of the preceding sentence, the pre-effective date portion is the amount which bears the same ratio to the interest expense for such taxable year as the number of days during such taxable year before the date of the enactment of this Act [Aug. 21, 1996] bears to 366.'']

Amendment by section 1221(a)(2) 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.

Pub. L. 99–514, title XII, §1223(c), Oct. 22, 1986, 100 Stat. 2558, provided that: ''The amendments made by this section [amending this section and sections 881 and 954 of this title] shall apply to taxable years beginning after December 31, 1986.''

Pub. L. 99–514, title XII, §1242(c), Oct. 22, 1986, 100 Stat. 2580, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Amendment by section 1275(c)(7) 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(c)(2), (3) 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

Pub. L. 98–369, div. A, title I, §123(c), July 18, 1984, 98 Stat. 646, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 956 of this title] shall apply to accounts receivable and evidences of indebtedness transferred after March 1, 1984, in taxable years ending after such date.

''(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to accounts receivable and evidences of indebtedness acquired after March 1, 1984, and before March 1, 1994, by a Belgian corporation in existence on March 1, 1984, in any taxable year ending after such date, but only to the extent that the amount includible in gross income by reason of section 956 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] with respect to such corporation for all such taxable years is not reduced by reason of this paragraph by more than the lesser of—

''(A) $15,000,000 or

''(B) the amount of the Belgian corporation's adjusted basis on March 1, 1984, in stock of a foreign corporation formed to issue bonds outside the United States to the public.''

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

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 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, except that in applying section 864(c)(4)(B)(iii) of this title with respect to a binding contract entered into on or before Feb. 24, 1966, activities in the United States on or before such date in negotiating or carrying out such contract shall not be taken into account, see section 102(e)(1) of Pub. L. 89–809, set out as a note under section 861 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 401(d)(1)(D)(x), (xvii)(IV), (V) of Pub. L. 115–141 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Mar. 23, 2018, for purposes of determining liability for tax for periods ending after Mar. 23, 2018, see section 401(e) of Pub. L. 115–141, set out as a note under section 23 of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99–514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 1201(d)(4) of Pub. L. 99–514 notwithstanding any treaty obligation of the United States in effect on Oct. 22, 1986, and for nonapplication of amendments by sections 1211(b)(2) and 1242(a) of Pub. L. 99–514 to the extent application of such amendments would be contrary to any treaty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100–647 be treated as if it had been included in the provision of Pub. L. 99–514 to which such amendment relates, see section 1012(aa)(2) to (4) of Pub. L. 100–647, set out as a note under section 861 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.

§ 865. Source rules for personal property sales

(a) General rule

Except as otherwise provided in this section, income from the sale of personal property—

(1) by a United States resident shall be sourced in the United States, or

(2) by a nonresident shall be sourced outside the United States.

(b) Exception for inventory property

In the case of income derived from the sale of inventory property—

(1) this section shall not apply, and

(2) such income shall be sourced under the rules of sections 861(a)(6), 862(a)(6), and 863.

Notwithstanding the preceding sentence, any income from the sale of any unprocessed timber which is a softwood and was cut from an area in the United States shall be sourced in the United States and the rules of sections 862(a)(6) and 863(b) shall not apply to any such income. For purposes of the preceding sentence, the term ''unprocessed timber'' means any log, cant, or similar form of timber.

(c) Exception for depreciable personal property

(1) In general

Gain (not in excess of the depreciation adjustments) from the sale of depreciable personal property shall be allocated between sources in the United States and sources outside the United States—

(A) by treating the same proportion of such gain as sourced in the United States as the United States depreciation adjustments with respect to such property bear to the total depreciation adjustments, and

(B) by treating the remaining portion of such gain as sourced outside the United States.

(2) Gain in excess of depreciation

Gain (in excess of the depreciation adjustments) from the sale of depreciable personal property shall be sourced as if such property were inventory property.

(3) United States depreciation adjustments

For purposes of this subsection—

(A) In general

The term ''United States depreciation adjustments'' means the portion of the depreciation adjustments to the adjusted basis of the property which are attributable to the depreciation deductions allowable in computing taxable income from sources in the United States.

(B) Special rule for certain property

Except in the case of property of a kind described in section 168(g)(4), if, for any taxable year—

(i) such property is used predominantly in the United States, or

(ii) such property is used predominantly outside the United States,

all of the depreciation deductions allowable for such year shall be treated as having been allocated to income from sources in the United States (or, where clause (ii) applies, from sources outside the United States).

(4) Other definitions

For purposes of this subsection—

(A) Depreciable personal property

The term ''depreciable personal property'' means any personal property if the adjusted basis of such property includes depreciation adjustments.

(B) Depreciation adjustments

The term ''depreciation adjustments'' means adjustments reflected in the adjusted basis of any property on account of depreciation deductions (whether allowed with respect to such property or other property and whether allowed to the taxpayer or to any other person).

(C) Depreciation deductions

The term ''depreciation deductions'' means any deductions for depreciation or