

1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Superfund Revenue Act of 1986, Pub. L. 99-499, title V, to which it relates, see section 2001(e) of Pub. L. 100-647, set out as a note under section 56 of this title.

Pub. L. 100-647, title VI, §6133(c), Nov. 10, 1988, 102 Stat. 3721, provided that: "The amendments made by this subsection [probably means 'this section', which amended sections 882 and 884 of this title] shall apply to taxable years beginning after December 31, 1988."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 701(e)(4)(F) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99-514, set out as an Effective Date note under section 55 of this title.

Pub. L. 99-514, title XII, §1236(b), Oct. 22, 1986, 100 Stat. 2576, provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after November 16, 1985."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97-424, set out as a note under section 34 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-499 applicable to disposition after June 18, 1980, see section 1125(a) of Pub. L. 96-499, set out as an Effective Date note under section 897 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to taxable years beginning after Dec. 31, 1966, see section 104(m) of Pub. L. 89-809, set out as a note under section 11 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 701(e)(4)(F) of Pub. L. 99-514 notwithstanding 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), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

§ 883. Exclusions from gross income

(a) Income of foreign corporations from ships and aircraft

The following items shall not be included in gross income of a foreign corporation, and shall be exempt from taxation under this subtitle:

(1) Ships operated by certain foreign corporations

Gross income derived by a corporation organized in a foreign country from the inter-

national operation of a ship or ships if such foreign country grants an equivalent exemption to corporations organized in the United States.

(2) Aircraft operated by certain foreign corporations

Gross income derived by a corporation organized in a foreign country from the international operation of aircraft if such foreign country grants an equivalent exemption to corporations organized in the United States.

(3) Railroad rolling stock of foreign corporations

Earnings derived from payments by a common carrier for the use on a temporary basis (not expected to exceed a total of 90 days in any taxable year) of railroad rolling stock owned by a corporation of a foreign country which grants an equivalent exemption to corporations organized in the United States.

(4) Special rules

The rules of paragraphs (6), (7), and (8) of section 872(b) shall apply for purposes of this subsection.

(5) Special rule for countries which tax on residence basis

For purposes of this subsection, there shall not be taken into account any failure of a foreign country to grant an exemption to a corporation organized in the United States if such corporation is subject to tax by such foreign country on a residence basis pursuant to provisions of foreign law which meets such standards (if any) as the Secretary may prescribe.

(b) Earnings derived from communications satellite system

The earnings derived from the ownership or operation of a communications satellite system by a foreign entity designated by a foreign government to participate in such ownership or operation shall be exempt from taxation under this subtitle, if the United States, through its designated entity, participates in such system pursuant to the Communications Satellite Act of 1962 (47 U.S.C. 701 and following).

(c) Treatment of certain foreign corporations

(1) In general

Paragraph (1) or (2) of subsection (a) (as the case may be) shall not apply to any foreign corporation if 50 percent or more of the value of the stock of such corporation is owned by individuals who are not residents of such foreign country or another foreign country meeting the requirements of such paragraph.

(2) Treatment of controlled foreign corporations

Paragraph (1) shall not apply to any foreign corporation which is a controlled foreign corporation (as defined in section 957(a)).

(3) Special rules for publicly traded corporations

(A) Exception

Paragraph (1) shall not apply to any corporation which is organized in a foreign country meeting the requirements of para-

graph (1) or (2) of subsection (a) (as the case may be) and the stock of which is primarily and regularly traded on an established securities market in such foreign country, another foreign country meeting the requirements of such paragraph, or the United States.

(B) Treatment of stock owned by publicly traded corporation

Any stock in another corporation which is owned (directly or indirectly) by a corporation meeting the requirements of subparagraph (A) shall be treated as owned by individuals who are residents of the foreign country in which the corporation meeting the requirements of subparagraph (A) is organized.

(4) Stock ownership through entities

For purposes of paragraph (1), stock owned (directly or indirectly) by or for a corporation, partnership, trust, or estate 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.

(Aug. 16, 1954, ch. 736, 68A Stat. 283; Pub. L. 90-622, §1(a), Oct. 22, 1968, 82 Stat. 1311; Pub. L. 94-164, §6(a), Dec. 23, 1975, 89 Stat. 975; Pub. L. 99-514, title XII, §1212(c)(3)-(5), Oct. 22, 1986, 100 Stat. 2538; Pub. L. 100-647, title I, §1012(e)(1), (2)(A), (5), Nov. 10, 1988, 102 Stat. 3499, 3500; Pub. L. 101-239, title VII, §7811(i)(8)(D), (10), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 108-357, title IV, §419(b), Oct. 22, 2004, 118 Stat. 1513.)

REFERENCES IN TEXT

The Communications Satellite Act of 1962, referred to in subsec. (b), is Pub. L. 87-624, Aug. 31, 1962, 76 Stat. 419, as amended, which is classified generally to chapter 6 (§701 et seq.) of Title 47, Telecommunications. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 47 and Tables.

AMENDMENTS

2004—Subsec. (a)(4). Pub. L. 108-357 substituted “(6), (7), and (8)” for “(5), (6), and (7)”.

1989—Subsec. (a)(4). Pub. L. 101-239, §7811(i)(8)(D), substituted “(5), (6), and (7)” for “(5) and (6)”.

Subsec. (a)(5). Pub. L. 101-239, §7811(i)(10), added par. (5).

1988—Subsec. (a)(1), (2). Pub. L. 100-647, §1012(e)(2)(A), (5), struck out “to citizens of the United States and” after “exemption” and substituted “international operation” for “operation”.

Subsec. (c)(1). Pub. L. 100-647, §1012(e)(1)(B), substituted “Paragraph (1) or (2) of subsection (a) (as the case may be)” for “Paragraphs (1) and (2) of subsection (a)” and “such paragraph” for “such paragraphs (1) and (2)”.

Subsec. (c)(3). Pub. L. 100-647, §1012(e)(1)(A), substituted “Special rules” for “Exception” in heading and amended text generally. Prior to amendment, text read as follows: “Paragraph (1) shall not apply to any foreign corporation—

“(A) the stock of which is primarily and regularly traded on an established securities market in the foreign country in which such corporation is organized, or

“(B) which is wholly owned (either directly or indirectly) by another corporation meeting the require-

ments of subparagraph (A) and is organized in the same foreign country as such other corporation.”

1986—Subsec. (a)(1). Pub. L. 99-514, §1212(c)(3), added par. (1) and struck out former par. (1), ships under foreign flag, which read as follows: “Earnings derived from the operation of a ship or ships documented under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.”

Subsec. (a)(2). Pub. L. 99-514, §1212(c)(3), added par. (2) and struck out former par. (2), aircraft of foreign registry, which read as follows: “Earnings derived from the operation of aircraft registered under the laws of a foreign country which grants an equivalent exemption to citizens of the United States and to corporations organized in the United States.”

Subsec. (a)(4). Pub. L. 99-514, §1212(c)(4), added par. (4).

Subsec. (c). Pub. L. 99-514, §1212(c)(5), added subsec. (c).

1975—Subsec. (a)(3). Pub. L. 94-164 added par. (3).

1968—Pub. L. 90-622 designated existing provisions as subsec. (a), added subsec. (a) heading, and added subsec. (b).

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to wagers made after Oct. 22, 2004, see section 419(c) of Pub. L. 108-357, set out as a note under section 872 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 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 Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1212(f) of Pub. L. 99-514, set out as a note under section 863 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94-164, §6(b), Dec. 23, 1975, 89 Stat. 976, provided that: “The amendment made by this section [amending this section] shall apply to payments made after November 18, 1974.”

EFFECTIVE DATE OF 1968 AMENDMENT

Pub. L. 90-622, §1(b), Oct. 22, 1968, 82 Stat. 1311, provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1966.”

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

For nonapplication of amendment by section 1212(c)(3)-(5) of Pub. L. 99-514 to the extent application of such amendment 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)(3), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

§ 884. Branch profits tax**(a) Imposition of tax**

In addition to the tax imposed by section 882 for any taxable year, there is hereby imposed on any foreign corporation a tax equal to 30 percent of the dividend equivalent amount for the taxable year.

(b) Dividend equivalent amount

For purposes of subsection (a), the term “dividend equivalent amount” means the foreign corporation’s effectively connected earnings and profits for the taxable year adjusted as provided in this subsection:

(1) Reduction for increase in U.S. net equity

If—

(A) the U.S. net equity of the foreign corporation as of the close of the taxable year, exceeds

(B) the U.S. net equity of the foreign corporation as of the close of the preceding taxable year,

the effectively connected earnings and profits for the taxable year shall be reduced (but not below zero) by the amount of such excess.

(2) Increase for decrease in net equity**(A) In general**

If—

(i) the U.S. net equity of the foreign corporation as of the close of the preceding taxable year, exceeds

(ii) the U.S. net equity of the foreign corporation as of the close of the taxable year,

the effectively connected earnings and profits for the taxable year shall be increased by the amount of such excess.

(B) Limitation**(i) In general**

The increase under subparagraph (A) for any taxable year shall not exceed the accumulated effectively connected earnings and profits as of the close of the preceding taxable year.

(ii) Accumulated effectively connected earnings and profits

For purposes of clause (i), the term “accumulated effectively connected earnings and profits” means the excess of—

(I) the aggregate effectively connected earnings and profits for preceding taxable years beginning after December 31, 1986, over

(II) the aggregate dividend equivalent amounts determined for such preceding taxable years.

(c) U.S. net equity

For purposes of this section—

(1) In general

The term “U.S. net equity” means—

(A) U.S. assets, reduced (including below zero) by

(B) U.S. liabilities.

(2) U.S. assets and U.S. liabilities

For purposes of paragraph (1)—

(A) U.S. assets

The term “U.S. assets” means the money and aggregate adjusted bases of property of the foreign corporation treated as connected with the conduct of a trade or business in the United States under regulations prescribed by the Secretary. For purposes of the preceding sentence, the adjusted basis of any property shall be its adjusted basis for purposes of computing earnings and profits.

(B) U.S. liabilities

The term “U.S. liabilities” means the liabilities of the foreign corporation treated as connected with the conduct of a trade or business in the United States under regulations prescribed by the Secretary.

(C) Regulations to be consistent with allocation of deductions

The regulations prescribed under subparagraphs (A) and (B) shall be consistent with the allocation of deductions under section 882(c)(1).

(d) Effectively connected earnings and profits

For purposes of this section—

(1) In general

The term “effectively connected earnings and profits” means earnings and profits (without diminution by reason of any distributions made during the taxable year) which are attributable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States.

(2) Exception for certain income

The term “effectively connected earnings and profits” shall not include any earnings and profits attributable to—

(A) income not includible in gross income under paragraph (1) or (2) of section 883(a),

(B) income treated as effectively connected with the conduct of a trade or business within the United States under section 921(d) or 926(b) (as in effect before their repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000),

(C) gain on the disposition of a United States real property interest described in section 897(c)(1)(A)(ii),

(D) income treated as effectively connected with the conduct of a trade or business within the United States under section 953(c)(3)(C), or

(E) income treated as effectively connected with the conduct of a trade or business within the United States under section 882(e).

Property and liabilities of the foreign corporation treated as connected with such income under regulations prescribed by the Secretary shall not be taken into account in determining the U.S. assets or U.S. liabilities of the foreign corporation.

(e) Coordination with income tax treaties; etc.**(1) Limitation on treaty exemption**

No treaty between the United States and a foreign country shall exempt any foreign cor-