between related persons (within the meaning of section 482), the amount of any costs—

(1) which are taken into account in computing the basis or inventory cost of such property by the purchaser, and

(2) which are also taken into account in computing the customs value of such property,

shall not, for purposes of computing such basis or inventory cost for purposes of this chapter, be greater than the amount of such costs taken into account in computing such customs value.

(b) Customs value; import

For purposes of this section—

(1) Customs value

The term ''customs value'' means the value taken into account for purposes of determining the amount of any customs duties or any other duties which may be imposed on the importation of any property.

(2) Import

Except as provided in regulations, the term ''import'' means the entering, or withdrawal from warehouse, for consumption.

(Added Pub. L. 99–514, title XII, § 1248(a), Oct. 22, 1986, 100 Stat. 2584.)

EFFECTIVE DATE

Pub. L. 99–514, title XII, § 1248(c), Oct. 22, 1986, 100 Stat. 2584, provided that: ''The amendments made by this section [enacting this section] shall apply to transactions entered into after March 18, 1986.''

§ 1060. Special allocation rules for certain asset acquisitions

(a) General rule

In the case of any applicable asset acquisition, for purposes of determining both—

(1) the transferee's basis in such assets, and

(2) the gain or loss of the transferor with respect to such acquisition,

the consideration received for such assets shall be allocated among such assets acquired in such acquisition in the same manner as amounts are allocated to assets under section 338(b)(5). If in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate.

(b) Information required to be furnished to Secretary

Under regulations, the transferor and transferee in an applicable asset acquisition shall, at such times and in such manner as may be provided in such regulations, furnish to the Secretary the following information:

(1) The amount of the consideration received for the assets which is allocated to section 197 intangibles.

(2) Any modification of the amount described in paragraph (1).

(3) Any other information with respect to other assets transferred in such acquisition as the Secretary deems necessary to carry out the provisions of this section.

(c) Applicable asset acquisition

For purposes of this section, the term ''applicable asset acquisition'' means any transfer (whether directly or indirectly)—

(1) of assets which constitute a trade or business, and

(2) with respect to which the transferee's basis in such assets is determined wholly by reference to the consideration paid for such assets.

A transfer shall not be treated as failing to be an applicable asset acquisition merely because section 1031 applies to a portion of the assets transferred.

(d) Treatment of certain partnership transactions

In the case of a distribution of partnership property or a transfer of an interest in a partnership—

(1) the rules of subsection (a) shall apply but only for purposes of determining the value of section 197 intangibles for purposes of applying section 755, and

(2) if section 755 applies, such distribution or transfer (as the case may be) shall be treated as an applicable asset acquisition for purposes of subsection (b).

(e) Information required in case of certain transfers of interests in entities

(1) In general

If—

(A) a person who is a 10-percent owner with respect to any entity transfers an interest in such entity, and

(B) in connection with such transfer, such owner (or a related person) enters into an employment contract, covenant not to compete, royalty or lease agreement, or other agreement with the transferee,

such owner and the transferee shall, at such time and in such manner as the Secretary may prescribe, furnish such information as the Secretary may require.

(2) 10-percent owner

For purposes of this subsection—

(A) In general

The term ''10-percent owner'' means, with respect to any entity, any person who holds 10 percent or more (by value) of the interests in such entity immediately before the transfer.

(B) Constructive ownership

Section 318 shall apply in determining ownership of stock in a corporation. Similar principles shall apply in determining the ownership of interests in any other entity.

(3) Related person

For purposes of this subsection, the term ''related person'' means any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the 10-percent owner.

(f) Cross reference

For provisions relating to penalties for failure to file a return required by this section, see section 6721.

(Added Pub. L. 99–514, title VI, §641(a), Oct. 22, 1986, 100 Stat. 2282; amended Pub. L. 100–647, title I, §1006(h)(1), (2), (3)(B), Nov. 10, 1988, 102 Stat. 3410; Pub. L. 101–508, title XI, §11323(a), (b)(1), Nov. 5, 1990, 104 Stat. 1388–464; Pub. L. 103–66, title XIII, §13261(e), Aug. 10, 1993, 107 Stat. 539.)

PRIOR PROVISIONS

A prior section 1060 was renumbered section 1062 of this title.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–66, §13261(e)(1), substituted ''section 197 intangibles'' for ''goodwill or going concern value''.

Subsec. (d)(1). Pub. L. 103–66, §13261(e)(2), substituted ''section 197 intangibles'' for ''goodwill or going concern value (or similar items)''.

1990—Subsec. (a). Pub. L. 101–508, §11323(a), inserted at end ''If in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor unless the Secretary determines that such allocation (or fair market value) is not appropriate.''

Subsecs. (e), (f). Pub. L. 101–508, §11323(b)(1), added subsec. (e) and redesignated former subsec. (e) as (f).

1988—Subsec. (b)(3). Pub. L. 100–647, §1006(h)(1), substituted ''deems'' for ''may find''.

Subsec. (d). Pub. L. 100–647, §1006(h)(2), added subsec. (d).

Subsec. (e). Pub. L. 100–647, §1006(h)(3)(B), added subsec. (e).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, with respect to property acquired after Aug. 10, 1993, see section 13261(g) of Pub. L. 103–66, set out as an Effective Date note under section 197 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to acquisitions after Oct. 9, 1990, but not applicable to any acquisition pursuant to a written binding contract in effect on Oct. 9, 1990, and at all times thereafter before such acquisition, see section 11323(d) of Pub. L. 101–508, set out as a note under section 338 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

Pub. L. 99–514, title VI, §641(c), Oct. 22, 1986, 100 Stat. 2283, provided that: ''The amendments made by this section [enacting this section and renumbering former section 1060 as 1061] shall apply to any acquisition of assets after May 6, 1986, unless such acquisition is pursuant to a binding contract which was in effect on May 6, 1986, and at all times thereafter.''

§1061. Partnership interests held in connection with performance of services

(a) In general

If one or more applicable partnership interests are held by a taxpayer at any time during the taxable year, the excess (if any) of—

(1) the taxpayer's net long-term capital gain with respect to such interests for such taxable year, over

(2) the taxpayer's net long-term capital gain with respect to such interests for such taxable year computed by applying paragraphs (3) and (4) of sections[1] 1222 by substituting ''3 years'' for ''1 year'',

shall be treated as short-term capital gain, notwithstanding section 83 or any election in effect under section 83(b).

(b) Special rule

To the extent provided by the Secretary, subsection (a) shall not apply to income or gain attributable to any asset not held for portfolio investment on behalf of third party investors.

(c) Applicable partnership interest

For purposes of this section—

(1) In general

Except as provided in this paragraph or paragraph (4), the term ''applicable partnership interest'' means any interest in a partnership which, directly or indirectly, is transferred to (or is held by) the taxpayer in connection with the performance of substantial services by the taxpayer, or any other related person, in any applicable trade or business. The previous sentence shall not apply to an interest held by a person who is employed by another entity that is conducting a trade or business (other than an applicable trade or business) and only provides services to such other entity.

(2) Applicable trade or business

The term ''applicable trade or business'' means any activity conducted on a regular, continuous, and substantial basis which, regardless of whether the activity is conducted in one or more entities, consists, in whole or in part, of—

(A) raising or returning capital, and

(B) either—

(i) investing in (or disposing of) specified assets (or identifying specified assets for such investing or disposition), or

(ii) developing specified assets.

(3) Specified asset

The term ''specified asset'' means securities (as defined in section 475(c)(2) without regard to the last sentence thereof), commodities (as defined in section 475(e)(2)), real estate held for rental or investment, cash or cash equivalents, options or derivative contracts with respect to any of the foregoing, and an interest in a partnership to the extent of the partnership's proportionate interest in any of the foregoing.

(4) Exceptions

The term ''applicable partnership interest'' shall not include—

(A) any interest in a partnership directly or indirectly held by a corporation, or

(B) any capital interest in the partnership which provides the taxpayer with a right to share in partnership capital commensurate with—

(i) the amount of capital contributed (determined at the time of receipt of such partnership interest), or

[1] So in original. Probably should be ''section''.