

### Internal Revenue Code Section 904(d)(2)(A)

#### Limitation on Credit

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(d) Separate application of section with respect to certain categories of income.

(1) In general.

The provisions of subsections (a) , (b) , and (c) and sections 902 , 907 , and 960 shall be applied separately with respect to-

(A) passive category income, and

(B) general category income.

(2) Definitions and special rules.

For purposes of this subsection -

(A) Categories.

(i) Passive category income. The term "passive category income" means passive income and specified passive category income.

(ii) General category income. The term "general category income" means income other than passive category income.

(B) Passive income.

(i) In general. Except as otherwise provided in this subparagraph , the term "passive income" means any income received or accrued by any person which is of a kind which would be foreign personal holding company income (as defined in section 954(c) ).

(ii) Certain amounts included. Except as provided in clause (iii) , the term "passive income" includes, except as provided in subparagraph (E)(iii) or paragraph (3)(I) , any amount includible in gross income under section 1293 (relating to certain passive foreign investment companies).

(iii) Exceptions. The term "passive income" shall not include-

(I) any export financing interest, and

(II) any high-taxed income.

(iv) Clarification of application of section 864(d)(6) . In determining whether any income is of a kind which would be foreign personal holding



company income, the rules of section 864(d)(6) shall apply only in the case of income of a controlled foreign corporation.

(v) Specified passive category income. The term "specified passive category income" means-

(I) dividends from a DISC or former DISC (as defined in section 992(a) ) to the extent such dividends are treated as income from sources without the United States, and

(II) distributions from a former FSC (as defined in section 922 ) out of earnings and profits attributable to foreign trade income (within the meaning of section 923(b)) or interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income (as defined in section 923(b)).

Any reference in subclause II to section 922 , 923 , or 927 shall be treated as a reference to such section as in effect before its repeal by the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.

(C) Treatment of financial services income and companies.

(i) In general. Financial services income shall be treated as general category income in the case of-

(I) a member of a financial services group, and

(II) any other person if such person is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business.

(ii) Financial services group. The term "financial services group" means any affiliated group (as defined in section 1504(a) without regard to paragraphs (2) and (3) of section 1504(b) ) which is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business. In determining whether such a group is so engaged, there shall be taken into account only the income of members of the group that are-

(I) United States corporations, or

(II) controlled foreign corporations in which such United States corporations own, directly or indirectly, at least 80 percent of the total voting power and value of the stock.

(iii) Pass-thru entities. The Secretary shall by regulation specify for purposes of this subparagraph the treatment of financial services income received or accrued by partnerships and by other pass-thru entities which are not members of a financial services group.

(D) Financial services income.

(i) In general. Except as otherwise provided in this subparagraph , the term "financial services income" means any income which is received or accrued by any person predominantly engaged in the active conduct of a banking, insurance, financing, or similar business, and which is-

(I) described in clause (ii) , or

(II) passive income (determined without regard to subparagraph (B)(iii)(II) ).

(ii) General description of financial services income. Income is described in this clause if such income is-

(I) derived in the active conduct of a banking, financing, or similar business,

(II) derived from the investment by an insurance company of its unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business, or

(III) of a kind which would be insurance income as defined in section 953(a) determined without regard to those provisions of paragraph (1)(A) of such section which limit insurance income to income from countries other than the country in which the corporation was created or organized.

(E) Noncontrolled section 902 corporation.

(i) In general. The term "noncontrolled section 902 corporation" means any foreign corporation with respect to which the taxpayer meets the stock ownership requirements of section 902(a) (or, for purposes of applying paragraph (3) or (4) , the requirements of section 902(b) ). A controlled foreign corporation shall not be treated as a noncontrolled section 902 corporation with respect to any distribution out of its earnings and profits for periods during which it was a controlled foreign corporation.

(ii) Treatment of inclusions under section 1293 . If any foreign corporation is a non-controlled section 902 corporation with respect to the taxpayer, any inclusion under section 1293 with respect to such corporation shall be treated as a dividend from such corporation.

(F) High-taxed income. The term "high-taxed income" means any income which (but for this subparagraph ) would be passive income if the sum of-

(i) the foreign income taxes paid or accrued by the taxpayer with respect to such income, and

(ii) the foreign income taxes deemed paid by the taxpayer with respect to such income under section 902 or 960 ,

exceeds the highest rate of tax specified in section 1 or 11 (whichever applies) multiplied by the amount of such income (determined with regard to section 78 ). For purposes of the preceding sentence, the term "foreign income taxes" means

any income, war profits, or excess profits tax imposed by any foreign country or possession of the United States.

(G) Export financing interest. For purposes of this paragraph , the term "export financing interest" means any interest derived from financing the sale (or other disposition) for use or consumption outside the United States of any property-

(i) which is manufactured, produced, grown, or extracted in the United States by the taxpayer or a related person, and

(ii) not more than 50 percent of the fair market value of which is attributable to products imported into the United States.

For purposes of clause (ii) , the fair market value of any property imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation.

(H) Treatment of income tax base differences.

(i) In general. In the case of taxable years beginning after December 31, 2006, tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles shall be treated as imposed on income described in paragraph (1)(B).

(ii) Special rule for years before 2007.

(I) In general. In the case of taxes paid or accrued in taxable years beginning after December 31, 2004, and before January 1, 2007, a taxpayer may elect to treat tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles as tax imposed on income described in subparagraph (C) or (I) of paragraph (1).

(II) Election irrevocable. Any such election shall apply to the taxable year for which made and all subsequent taxable years described in subclause (I) unless revoked with the consent of the Secretary.

(I) Related person. For purposes of this paragraph , the term "related person" has the meaning given such term by section 954(d)(3) , except that such section shall be applied by substituting "the person with respect to whom the determination is being made" for "controlled foreign corporation" each place it appears.

(J) Repealed

(K) Transitional rules for 2007 changes. For purposes of paragraph (1) -

(i) taxes carried from any taxable year beginning before January 1, 2007, to any taxable year beginning on or after such date, with respect to any item of income, shall be treated as described in the subparagraph of

paragraph (1) in which such income would be described were such taxes paid or accrued in a taxable year beginning on or after such date, and

(ii) the Secretary may by regulations provide for the allocation of any carryback of taxes with respect to income from a taxable year beginning on or after January 1, 2007, to a taxable year beginning before such date for purposes of allocating such income among the separate categories in effect for the taxable year to which carried.

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