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Internal Revenue Code Section 954(c)

Foreign base company income

(a) Foreign base company income.

For purposes of section 952(a)(2) , the term "foreign base company income" means for any taxable year the sum of-

(1) the foreign personal holding company income for the taxable year (determined under subsection (c) and reduced as provided in subsection (b)(5)),

(2) the foreign base company sales income for the taxable year (determined under subsection (d) and reduced as provided in subsection (b)(5)), and

(3) the foreign base company services income for the taxable year (determined under subsection (e) and reduced as provided in subsection (b)(5)).

(4) Repealed.

(5) Repealed.

(b) Exclusions and special rules.

(1) Repealed.

(2) Repealed.

(3) De minimis, etc., rules.

For purposes of subsection (a) and section 953 -

(A) De minimis rule. If the sum of foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year is less than the lesser of-

(i) 5 percent of gross income, or

(ii) \$1,000,000,

no part of the gross income for the taxable year shall be treated as foreign base company income or insurance income.

(B) Foreign base company income and insurance income in excess of 70 percent of gross income. If the sum of the foreign base company income (determined without regard to paragraph (5)) and the gross insurance income for the taxable year exceeds 70 percent of gross income, the entire gross income for the taxable year shall, subject to the provisions of paragraphs (4) and (5) , be treated as foreign base company income or insurance income (whichever is appropriate).

(C) Gross insurance income. For purposes of subparagraphs (A) and (B) , the term "gross insurance income" means any item of gross income taken into account in determining insurance income under section 953 .

(4) Exception for certain income subject to high foreign taxes.

For purposes of subsection (a) and section 953 , foreign base company income and insurance income shall not include any item of income received by a controlled foreign corporation if the taxpayer establishes to the satisfaction of the Secretary that such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11 .

(5) Deductions to be taken into account.

For purposes of subsection (a) , the foreign personal holding company income, the foreign base company sales income, and the foreign base company services income shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income. Except to the extent provided in regulations prescribed by the Secretary, any interest which is paid or accrued by the controlled foreign corporation to any United States shareholder in such corporation (or any controlled foreign corporation related to such a shareholder) shall be allocated first to foreign personal holding company income which is passive income (within the meaning of section 904(d)(2)) of such corporation to the extent thereof. The Secretary may, by regulations, provide that the preceding sentence shall apply also to interest paid or accrued to other persons.

(6) Repealed.

 (c) Foreign personal holding company income.

(1) In general.

For purposes of subsection (a)(1) , the term "foreign personal holding company income" means the portion of the gross income which consists of:

(A) Dividends, etc. Dividends, interest, royalties, rents, and annuities.

(B) Certain property transactions. The excess of gains over losses from the sale or exchange of property-

(i) which gives rise to income described in subparagraph (A) (after application of paragraph (2)(A)) other than property which gives rise to income not treated as foreign personal holding company income by reason of subsection (h) or (i) for the taxable year,

(ii) which is an interest in a trust, partnership, or REMIC, or

(iii) which does not give rise to any income.

Gains and losses from the sale or exchange of any property which, in the hands of the controlled foreign corporation, is property described in section 1221(a)(1) shall not be taken into account under this subparagraph .

(C) Commodities transactions. The excess of gains over losses from transactions (including futures, forward, and similar transactions) in any commodities. This subparagraph shall not apply to gains or losses which-

(i) arise out of commodity hedging transactions (as defined in paragraph (5)(A)),

(ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation's commodities are property described in paragraph (1) , (2) , or (8) of section 1221(a) , or

(iii) are foreign currency gains or losses (as defined in section 988(b)) attributable to any section 988 transactions.

(D) Foreign currency gains. The excess of foreign currency gains over foreign currency losses (as defined in section 988(b)) attributable to any section 988 transactions. This subparagraph shall not apply in the case of any transaction directly related to the business needs of the controlled foreign corporation.

(E) Income equivalent to interest. Any income equivalent to interest, including income from commitment fees (or similar amounts) for loans actually made.

(F) Income from notional principal contracts.

(i) In general. Net income from notional principal contracts.

(ii) Coordination with other categories of foreign personal holding company income.-Any item of income, gain, deduction, or loss from a notional principal contract entered into for purposes of hedging any item described in any preceding subparagraph shall not be taken into account for purposes of this subparagraph but shall be taken into account under such other subparagraph.

(G) Payments in lieu of dividends. Payments in lieu of dividends which are made pursuant to an agreement to which section 1058 applies.

(H) Personal service contracts.

(i) Amounts received under a contract under which the corporation is to furnish personal services if-

(I) some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or

(II) the individual who is to perform the services is designated (by name or by description) in the contract, and

(ii) amounts received from the sale or other disposition of such a contract.

This subparagraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable

year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.

(2) Exception for certain amounts.

(A) Rents and royalties derived in active business. Foreign personal holding company income shall not include rents and royalties which are derived in the active conduct of a trade or business and which are received from a person other than a related person (within the meaning of subsection (d)(3)). For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.

(B) Certain export financing. Foreign personal holding company income shall not include any interest which is derived in the conduct of a banking business and which is export financing interest (as defined in section 904(d)(2)(G)).

(C) Exception for dealers. Except as provided by regulations, in the case of a regular dealer in property which is property described in paragraph (1)(B) , forward contracts, option contracts, or similar financial instruments (including notional principal contracts and all instruments referenced to commodities), there shall not be taken into account in computing foreign personal holding company income-

(i) any item of income, gain, deduction, or loss (other than any item described in subparagraph (A) , (E) , or (G) of paragraph (1)) from any transaction (including hedging transactions and transactions involving physical settlement) entered into in the ordinary course of such dealer's trade or business as such a dealer, and

(ii) if such dealer is a dealer in securities (within the meaning of section 475) , any interest or dividend or equivalent amount described in subparagraph (E) or (G) of paragraph (1) from any transaction (including any hedging transaction or transaction described in section 956(c)(2)(I)) entered into in the ordinary course of such dealer's trade or business as such a dealer in securities, but only if the income from the transaction is attributable to activities of the dealer in the country under the laws of which the dealer is created or organized (or in the case of a qualified business unit described in section 989(a) , is attributable to activities of the unit in the country in which the unit both maintains its principal office and conducts substantial business activity).

(3) Certain income received from related persons.

(A) In general. Except as provided in subparagraph (B) , the term "foreign personal holding company income" does not include-

(i) dividends and interest received from a related person which (I) is a corporation created or organized under the laws of the same foreign country under the laws of which the controlled foreign corporation is

created or organized, and (II) has a substantial part of its assets used in its trade or business located in such same foreign country, and

(ii) rents and royalties received from a corporation which is a related person for the use of, or the privilege of using, property within the country under the laws of which the controlled foreign corporation is created or organized.

To the extent provided in regulations, payments made by a partnership with 1 or more corporate partners shall be treated as made by such corporate partners in proportion to their respective interests in the partnership.

(B) Exception not to apply to items which reduce subpart F income. Subparagraph (A) shall not apply in the case of any interest, rent, or royalty to the extent such interest, rent, or royalty reduces the payor's subpart F income or creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation.

(C) Exception for certain dividends. Subparagraph (A)(i) shall not apply to any dividend with respect to any stock which is attributable to earnings and profits of the distributing corporation accumulated during any period during which the person receiving such dividend did not hold such stock either directly, or indirectly through a chain of one or more subsidiaries each of which meets the requirements of subparagraph (A)(i) .

(4) Look-thru rule for certain partnership sales.

(A) In general. In the case of any sale by a controlled foreign corporation of an interest in a partnership with respect to which such corporation is a 25-percent owner, such corporation shall be treated for purposes of this subsection as selling the proportionate share of the assets of the partnership attributable to such interest. The Secretary shall prescribe such regulations as may be appropriate to prevent abuse of the purposes of this paragraph , including regulations providing for coordination of this paragraph with the provisions of subchapter K.

(B) 25-percent owner. For purposes of this paragraph , the term "25-percent owner" means a controlled foreign corporation which owns directly 25 percent or more of the capital or profits interest in a partnership. For purposes of the preceding sentence, if a controlled foreign corporation is a shareholder or partner of a corporation or partnership, the controlled foreign corporation shall be treated as owning directly its proportionate share of any such capital or profits interest held directly or indirectly by such corporation or partnership. If a controlled foreign corporation is treated as owning a capital or profits interest in a partnership under constructive ownership rules similar to the rules of section 958(b) , the controlled foreign corporation shall be treated as owning such interest directly for purposes of this subparagraph.

(5) Definition and special rules relating to commodity transactions.

(A) Commodity hedging transactions. For purposes of paragraph (1)(C)(i) , the term "commodity hedging transaction" means any transaction with respect to a commodity if such transaction-

(i) is a hedging transaction as defined in section 1221(b)(2) , determined-

(I) without regard to subparagraph (A)(ii) thereof,

(II) by applying subparagraph (A)(i) thereof by substituting "ordinary property or property described in section 1231(b) " for "ordinary property", and

(III) by substituting "controlled foreign corporation" for "taxpayer" each place it appears, and

(ii) is clearly identified as such in accordance with section 1221(a)(7) .

(B) Treatment of dealer activities under paragraph (1)(C) . Commodities with respect to which gains and losses are not taken into account under paragraph (2)(C) in computing a controlled foreign corporation's foreign personal holding company income shall not be taken into account in applying the substantially all test under paragraph (1)(C)(ii) to such corporation.

(C) Regulations. The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of paragraph (1)(C) in the case of transactions involving related parties.

(6) Look-thru rule for related controlled foreign corporations.

(A) In general. For purposes of this subsection , dividends, interest, rents, and royalties received or accrued from a controlled foreign corporation which is a related person shall not be treated as foreign personal holding company income to the extent attributable or properly allocable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which is neither subpart F income nor income treated as effectively connected with the conduct of a trade or business in the United States. For purposes of this subparagraph , interest shall include factoring income which is treated as income equivalent to interest for purposes of paragraph (1)(E) . The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph , including such regulations as may be necessary or appropriate to prevent the abuse of the purposes of this paragraph .

(B) Exception. Subparagraph (A) shall not apply in the case of any interest, rent, or royalty to the extent such interest, rent, or royalty creates (or increases) a deficit which under section 952(c) may reduce the subpart F income of the payor or another controlled foreign corporation.

(C) Application. Subparagraph (A) shall apply to taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2020, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

