

941 to 943. Repealed.

951. Amounts included in gross income of United States shareholders

(a) Amounts included. --

(i) his pro rata share (determined under paragraph (2)) of the corporation's subpart F income for such year,

(ii) his pro rata share (determined under section 955(a)(3) as in effect before the enactment of the Tax Reduction Act of 1975) of the corporation's previously excluded subpart F income withdrawn from investment in less developed countries for such year, and

(iii) his pro rata share (determined under section 955(a)(3)) of the corporation's previously excluded subpart F income withdrawn from foreign base company shipping operations for such year; and

(B) his pro rata share (determined under section 956(a)(2) of the corporation's increase in earnings invested in United States property for such year (but only to the extent not excluded from gross income under section 959(a)(2)).

(2) Pro rata share of subpart F income. -- The pro rate share referred to in paragraph (1)(A)(i) in the case of any United States shareholder is the amount --

(A) which would have been distributed with respect to the stock which such shareholder owns (within the meaning of section 958(a)) in such corporation if on the last day, in its taxable year, on which the corporation is a controlled foreign corporation it had distributed pro rata to its shareholders an amount (i) which bears the same ratio to its subpart F income for the taxable year, as (ii) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year, reduced by

(B) the amount of distributions received by any other person during such as a dividend with respect to such stock, but only to the extent of the dividend which would have been received if the distribution by the corporation had been the amount (i) which bears the same ratio to the subpart F income of such corporation for the taxable year, as (ii) the part of such year during which such shareholder did not own (within the meaning of section 958(a)) such stock bears to the entire year.

(3) Limitation on pro rata share of previously excluded subpart F income withdrawn from investment. -- For purposes of paragraph (1)(A)(iii), the pro rata share of any United States shareholder of the previously excluded subpart F income of a controlled foreign corporation withdrawn from investment in foreign base company shipping operations shall not exceed an amount --

(A) which bears the same ratio to his pro rata share of such income withdrawn (as determined under section 955(a)(3)) for the taxable year, as

(B) the part of such year during which the corporation is a

controlled foreign corporation bears to the entire year.

(4) Limitation on pro rata share of investment in United States property. -- For purposes of paragraph (1)(B), the pro rata share of any United States shareholder in the increase of the earnings of a controlled foreign corporation invested in United States property shall not exceed an amount (A) which bears the same ratio to his pro rata share of such increase (as determined under section 956(a)(2)) for the taxable year, as (B) the part of such year during which the corporation is a controlled foreign corporation bears to the entire year.

(b) United States shareholder defined. -- For purposes of this subpart, the term "United States shareholder" means, with respect to any foreign corporation, a United States Person (as defined in section 957(c)) who owns (within the meaning of section 958(a)), or is considered as owning by applying the rules of ownership of section 958(b), 10 percent of more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation.

(c) Coordination with election of a foreign investment company to distribute income. -- A United States shareholder who, for his taxable year, is a qualified shareholder (within the meaning of section 1247(c)) of a foreign investment company with respect to which an election under section 1247 is in effect shall not be required to include in gross income, for such taxable year, any amount under subsection (a) with respect to such company.

(d) Coordination with foreign personal holding company provisions. -- If, but for this subsection, an amount would be included in the gross income of a United States shareholder for any taxable year both under subsection (a)(1)(A)(i) and under section 551(b) (relating to foreign personal holding company income included in gross income of United States shareholder), such amount shall be included in the gross income of such shareholder only under subsection (a)(1)(A).

(e) Foreign trade income not taken into account. --

(1) In general. -- The foreign trade income of a FSC and any deductions which are apportioned or allocated to such income shall not be taken into account under this subpart.

(2) Foreign trade income. -- For purposes of this subsection, the term "foreign trade income" has the meaning given such term by section 923(b), but does not include section 923(a)(2) nonexempt income (within the meaning of section 927(d)(6)).

(f) Coordination with passive foreign investment company provisions. -- If, but for this subsection, an amount would be included in the gross income of a United States shareholder for any taxable year both under subsection (a)(1)(A)(i) and under section 1293 (relating to current taxation of income from certain passive foreign investment companies), such amount shall be included in the gross income of such shareholder only under subsection (a)(1)(A).

952. Subpart F income defined

(a) In general. -- For purposes of this subpart, the term "subpart F income" means, in the case of any controlled foreign corporation, the sum of --

- (1) insurance income (as defined under section 953),
- (2) the foreign base company income (as determined under section 954),
- (3) an amount equal to the product of --
 - (A) the income of such corporation other than income which --
 - (i) is attributable to earnings and profits of the foreign corporation included in the gross income of a United States person under section 951 (other than by reason of this paragraph), or
 - (ii) is described in subsection (b),

multiplied by

- (B) the international boycott factor (as determined under section 999),
- (4) the sum of the amounts of any illegal bribes, kickbacks, or other payments (within the meaning of section 162(c)) paid by or on behalf of the corporation during the taxable year of the corporation directly or indirectly in an official, employee, or agent in fact of a government, and
- (5) the income of such corporation derived from any foreign country during any period during which section 901(j) applies to such foreign country.

The payments referred to in paragraph (4) are payments which would be unlawful under the Foreign Corrupt Practices Act of 1977 of the payor were a United States person. For purposes of paragraph (5), the income described therein shall be reduced, under regulations prescribed by the Secretary, so as to take into account deductions (including taxes) properly allocable to such income.

- (b) Exclusion of United States income. -- In the case of a controlled foreign corporation, subpart F income does not include any item of income from sources within the United States which is effectively connected with the conduct by such corporation of a trade or business within the United States unless such item is exempt from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States. For purposes of the preceding sentence, income described in paragraph (2) or (3) of section 921(d) shall be treated as derived from sources within the United States.

- (c) Limitation. --
- (1) In general. --
- (A) Subpart F income limited to current earnings and profits. --
For purposes of subsection (a), the subpart F income of any controlled foreign corporation for any taxable year shall not exceed the earnings and profits of such corporation for any taxable year.
- (B) Certain prior year deficits may be taken into account. --
- (i) In general. -- The amount included in the gross income of any United States shareholder under section 951(a)(1)(A)(i) for any taxable year and attributable to a qualified activity shall be reduced by the amount of such shareholders pro rata share of any qualified deficit.
- (ii) Qualified deficit. -- The term "qualified deficit" means any deficit in earnings and profits of the controlled foreign corporation for any prior taxable year which began after December 31, 1986, and for which the controlled foreign corporation was a controlled foreign corporation; but only to the extent such deficit --
- (I) is attributable to the same qualified activity as the activity giving rise to the income being offset, and
- (II) has not previously been taken into account under this subparagraph.

In determining the deficit attributable to qualified activities described in clause (iii)(III) or (IV), deficits in earnings and profits (to the extent not previously taken into account under this section) for taxable years beginning after 1962 and before 1987 also shall be taken into account. In the case of the qualified activity described in clause (iii)(II), the rule of the preceding sentence shall apply, except that "1982" shall be substituted for "1962).

- (iii) Qualified activity. -- For purposes of this paragraph, the term "qualified activity" means any activity giving rise to --
- (I) foreign base company shipping income,
- (II) foreign base company oil related income,
- (III) foreign base company sales income,
- (IV) foreign base company services income,
- (V) in the case of a qualified insurance company, insurance income or foreign personal holding company income, or
- (VI) in the case of a qualified financial institution, foreign personal holding company income.
- (iv) Pro rata share. -- For purposes of this paragraph, the shareholder's pro rata share of any deficit for any prior taxable year shall be determined under rules similar

to rules under section 951(a)(2) for whichever of the following yields the smaller share:

- (I) the close of the taxable year, or
- (II) the close of the taxable year in which the deficit arose.
- (v) Qualified insurance company. -- For purposes of this subparagraph, the term "qualified insurance company" means any controlled foreign corporation predominantly engaged in the active conduct of an insurance business in the taxable year and in the prior taxable years in which the deficit arose.
- (vi) Qualified financial institution. -- For purposes of this paragraph, the term "qualified financial institution" means any controlled foreign corporation predominantly engaged in the active conduct of a banking, financing, or similar business in the taxable year and in the prior taxable year in which the deficit arose.
- (vii) Special rules for insurance income. --
 - (I) In general.-- An election may be made under this clause to have section 953(a) applied for purposes of this title without regard to the same country exception under paragraph (1)(A) thereof. Such election, once made, may be revoked only with the consent of the Secretary.
 - (II) Special rules for affiliated groups. -- In the case of an affiliated group of corporations (within the meaning of section 1504 but without regard to section 1504(b)(3) and by substituting "more than 50 percent" for "at least 80 percent" each place it appears), no election may be made under subclause (I) for any controlled foreign corporations who are members of such group and who were created or organized under the laws of the same country as such controlled foreign corporation. For purposes of clause (v), in determining whether any controlled corporation described in the preceding sentence is a qualified insurance company, all such corporation shall be treated as 1 corporation.
- (C) Certain deficits of member of the same chain of corporations may be taken into account. --
 - (i) In general. -- A controlled foreign corporation may elect to reduce the amount of its subpart F income for any taxable year which is attributable to any qualified activity by the amount of any deficit in earnings and profits of a qualified chain member for a taxable year ending with (or within) the taxable year of such controlled foreign corporation to the extent such

deficit is attributable to such activity. To the extent any deficit reduces subpart F income under the preceding sentence, such deficit shall not be taken into account under subparagraph (B).

- (ii) Qualified chain member. -- For purposes of this subparagraph, the term "qualified chain member" means, with respect to any controlled foreign corporation, any other corporation which is created or organized under the laws of the same foreign country as the controlled foreign corporation but only if --
 - (I) all the stock of such other corporation (other than directors' qualifying shares) is owned at all times during the taxable year in which the deficit arose (directly or through 1 or more corporations other than the common parent) by such controlled foreign corporation, or
 - (II) all the stock of such controlled foreign corporation (other than directors' qualifying shares) is owned at all times during the taxable year in which the deficit arose (directly or through 1 or more corporations other than the common parent) by such other corporation.
- (iii) Coordination. -- This subparagraph shall be applied after subparagraphs (A) and (B).
- (2) Recharacterization in subsequent taxable years. -- If the subpart F income of any controlled foreign corporation for any taxable year was reduced by reason of paragraph (1)(A), any excess of the earnings and profits of such corporation for any subsequent taxable year over the subpart F income of such foreign corporation for such taxable year shall be recharacterized as subpart F income under rules similar to the rules applicable under section 904(f)(5).
- (3) Special rule for determining earnings and profits. -- For purposes of this subsection, earnings and profits of any controlled foreign corporation shall be determined without regard to paragraphs (4), (5) and (6) of section 312(n). Under regulations, the preceding sentence shall not apply to the extent it would increase earnings and profits by an amount which was previously distributed by the controlled foreign corporation.
 - (d) Income derived from foreign country. -- The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subsection (a)(5), including regulations which treat income paid through 1 or more entities as derived from a foreign country to

which section 901(j) applies if such income was, without regard to such entities, derived from such country.

953. Insurance income

- (a) General rule. -- For purposes of section 952(a)(1), the term "insurance income" means any income which --
 - (1) is attributable to the issuing (or reinsuring) of any insurance or annuity contract --
 - (A) in connection with property in, liability arising out of activity in, or in connection with the lives or health of residents of, a country other than the country under the laws of which the controlled foreign corporation is created or organized, or
 - (B) in connection with risks not described in subparagraph (A) as the result of any arrangement whereby another corporation receives a substantially equal amount of premiums or other consideration in respect of issuing (or reinsuring) a contract described in subparagraph (A), and
 - (2) would (subject to the modifications provided by paragraphs (1) and (2) of subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance company.
- (b) Special rules. -- For purposes of subsection (a) --
 - (1) The following provisions of subchapter L shall not apply:
 - (A) The small life insurance company deduction.
 - (B) Section 805(a)(5) (relating to operations loss deduction).
 - (C) Section 832(c)(5) (relating to certain capital losses).
 - (2) The items referred to in --
 - (A) section 803(a)(1) (relating to gross amount of premiums and other considerations),
 - (B) section 803(a)(2) (relating to net decrease in reserves),
 - (C) section 805(a)(2) (relating to net increase in reserves), and
 - (D) section 832(b)(4) (relating to premiums earned on insurance contracts),

shall be taken into account only to the extent they are in respect of any reinsurance or the issuing of any insurance or annuity contract described in subsection (a)(1).

- (3) All items of income, expenses, losses, and deductions shall be properly allocated or apportioned under regulations prescribed by the Secretary.
- (c) Special rule for certain captive insurance companies. --
 - (1) In general. -- For purposes only of taking into account related person insurance income --
 - (A) the term "United States shareholder" means, with respect to

- any foreign corporation, a United States person (as defined in section 957(c)) who owns (within the meaning of section 958(a)) any stock of the foreign corporation,
- (B) the term "controlled foreign corporation" has the meaning given to such term by section 957(a) determined by substituting "25 percent or more" for "more than 50 percent", and
 - (C) the pro rata share referred to in section 951(a)(1)(A)(i) shall be determined under paragraph (5) of this subsection.
- (2) Related person insurance income. -- For purposes of this subsection, the term "related person insurance income" means any insurance income (within the meaning of subsection a)) attributable to a policy of insurance or reinsurance with respect to which the person (directly or indirectly) insured is a United States shareholder in the foreign corporation or a related person to such a shareholder.
- (3) Exceptions. --
- (A) Corporations not held by insureds. -- Paragraph (1) shall not apply to any foreign corporation if at all times during the taxable year of such foreign corporation --
 - (i) less than 20 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and
 - (ii) less than 20 percent of the total value of such corporation, is owned (directly or indirectly) insured under any policy of insurance or reinsurance issued by such corporation or who are related persons to any such person.
 - (B) De minimis exception. -- Paragraph (1) shall not apply to any foreign corporation for a taxable year of such corporation if the related person insurance income (determined on a gross basis) of such corporation for such taxable year is less than 20 percent of its insurance income (as so determined) for such taxable year determined without regard to those provisions