

903. Credit for taxes in lieu of income, etc., taxes

For purposes of this part and of sections 164(a) and 275(a), the term "income, war profits, and excess profits taxes" shall include a tax paid in lieu of a tax on income, war profits, or excess profits otherwise generally imposed by any foreign country or by any possession of the United States.

904. Limitation on credit

(a) Limitation. -- The total amount of the credit taken under section 901(a) shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources without the United States (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year.

(b) Taxable income for purpose of computing limitation. --

(1) Personal exemptions. -- For purposes of subsection (a), the taxable income in the case of an individual, estate, or trust shall be computed without any deduction for personal exemptions under section 151 or 642(b).

(2) Capital gains. -- For purposes of this section --

(A) In general. -- Taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only to the extent of foreign source capital gain net income.

(B) Special rules where capital gain rate differential. -- In the case of any taxable year for which there is a capital gain rate differential --

(i) in lieu of applying subparagraph (A), the taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only in an amount equal to foreign source capital gain net income reduced by the rate differential portion of foreign source net capital gain,

(ii) the entire taxable income shall include gain from the sale or exchange of capital assets only in an amount equal to capital gain net income reduced by the rate differential portion of net capital gain, and

(iii) for purposes of determining taxable income from sources outside the United States, any net capital loss (and any amount which is a short-term capital loss under section 1212(a)) from sources outside the United States to the extent taken into account in determining capital gain net income for the taxable year shall be reduced by an amount equal to the rate differential portion of the excess of net capital gain from sources within the United States over net capital gain.

(3) Definitions. -- For purposes of this subsection --

(A) Foreign source capital gain net income. -- The term "foreign source capital gain net income" means the lesser of --

(i) capital gain net income from sources without the United States, or

(ii) capital gain net income.

(B) Foreign source net capital gain. -- The term "foreign source net capital gain" means the lesser of --

(i) net capital gain from sources without the United States, or

(ii) net capital gain.

(C) Section 1231 gains. -- The term "gain from the sale or exchange of capital assets" includes any gain so treated under section 1231.

(D) Capital gain rate differential. -- There is a capital gain rate differential for any taxable year if --

(i) in the case of a taxpayer other than a corporation, subsection (h) of section 1 applies to such taxable year, or

(ii) in the case of a corporation, any rate of tax imposed by section 11, 511, or 831(a) or (b) (whichever applies) exceeds the alternative rate of tax under section 1201(a) (determined without regard to the last sentence of section 11(b)(1)).

(E) Rate differential portion. --

(i) In general. -- The rate differential portion of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as --

(I) the excess of the highest applicable tax rate over the alternative tax rate, bears to

(II) the highest applicable tax rate.

(ii) Highest applicable tax rate. -- For purposes of clause (i), the term "highest applicable tax rate" means --

(I) in the case of a taxpayer other than a corporation, the highest rate of tax set forth in subsection (a), (b), (c), (d), or (e) of section 1 (whichever applies), or

(II) in the case of a corporation, the highest rate of tax specified in section 11(b).

(iii) Alternative tax rate. -- For purposes of clause (i), the term "alternative tax rate" means --

(I) in the case of a taxpayer other than a corporation, the alternative rate of tax determined under section 1(h), or

(II) in the case of a corporation, the alternative rate of tax under section 1201(a).

(4) Coordination with section 936. -- For purposes of subsection (a), in the case of a corporation, the taxable income shall not include any portion thereof taken into account for purposes of the credit (if any) allowed by section 936.

(c) Carryback and carryover of excess tax paid. -- Any amount by which all taxes paid or accrued to foreign countries or possessions of the United States for any taxable year for which the taxpayer chooses to have the benefits of this subpart exceed the limitation under subsection (a) shall be deemed taxes paid or accrued to foreign countries or possessions of the United States in the second preceding taxable year, in the first preceding taxable year, and in the first, second, third, fourth, or fifth succeeding taxable years, in that order and to the extent not deemed taxes paid or accrued in a prior taxable year, in the amount by which the limitation under subsection (a) for such preceding or succeeding taxable year and the amount of the taxes for any taxable year earlier than the current taxable year which shall be deemed to have been paid or accrued in such preceding or subsequent taxable year (whether or not the taxpayer chooses to have the benefits of this subpart with respect to such earlier taxable year). Such amount deemed paid or accrued in any year may be availed of only as a tax credit and not as a deduction and only if the taxpayer for such year chooses to have benefits of this subpart as to taxes paid or accrued for that year to foreign countries or possessions of the United States.

(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 each of the following items of income:

(A) passive income,

(B) high withholding tax interest,

(C) financial services income,

(D) shipping income,

(E) in the case of a corporation, dividends from each noncontrolled section 902 corporation,

(F) 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,

(G) taxable income attributable to foreign trade income (within the meaning of section 923(b)),

(H) distributions from a FSC (or a former FSC) 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)) and

(I) income other than income described in any of the preceding subparagraphs.

(2) Definitions and special rules. -- For purposes of this subsection --

(A) 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 any amount includible in gross income under section 551 or, except as provided in subparagraph (E)(iii) or paragraph (3)(I), section 1293 (relating to certain passive foreign investment companies).

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

(I) any income described in a subparagraph of paragraph (1) other than subparagraph (A),

(II) any export financing interest,

(III) any high-taxed income, and

(IV) any foreign oil and gas extraction income (as defined in section 907(c)).

(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.

(B) High withholding tax interest. --

(i) In general. -- Except as otherwise provided in this subparagraph, the term "high withholding tax interest" means any interest if --

(I) such interest is subject to a withholding tax of a foreign country or possession of the United States (or other tax determined on a gross basis), and

(II) the rate of such tax applicable to such interest is at least 5 percent.

(ii) Exception for export financing. -- The term "high withholding tax interest" shall not include any export financing interest.

(iii) Regulations. -- The Secretary may by regulations provide that --

(I) amounts (not otherwise high withholding tax interest) shall be treated as high withholding tax interest where necessary to prevent avoidance of the purposes of this subparagraph, and

(II) a tax shall not be treated as a withholding tax or other tax imposed on a gross basis if such tax is in the nature of a prepayment of a tax imposed on a net basis.

(C) 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),

(II) passive income (determined without regard to subclause (I) of subparagraph (A)(iii)), or

(III) export financing interest which (but for subparagraph (B)(ii)) would be high withholding tax interest.

(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.

(iii) Exceptions. -- The term "financial services income" does not include --

(I) any high withholding tax interest,

(II) any dividend from a noncontrolled section 902 corporation, and

(III) any export financing interest not described in clause (i)(III).

(D) Shipping income. -- The term "shipping income" means any income received or accrued by any person which is of a kind which would be foreign base company shipping income (as defined in section 954(f)). Such term does not include any dividend from a noncontrolled section 902 corporation and does not include any financial services income.

(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), 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 period during which it was a controlled foreign corporation and except as provided in regulations, the taxpayer was a United States shareholder in such corporation.

(ii) Special rule for taxes on high-withholding tax interest. -- If a foreign corporation is a noncontrolled section 902 corporation with respect to the taxpayer, taxes on high withholding tax interest (to the extent imposed at a rate in excess of 5 percent) shall not be treated as foreign taxes for purposes of determining the amount of foreign taxes deemed paid by the taxpayer under section 902.

(iii) Treatment of inclusion under section 1293. -- If any foreign corporation is a noncontrolled 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) 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.

(I) Transitional rule. -- For purposes of paragraph (1) --

(i) taxes paid or accrued in a taxable year beginning before January 1, 1987, with respect to income which was described in subparagraph (A) of paragraph (1) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) shall be treated as taxes paid or accrued with respect to income described in subparagraph (A) of paragraph (1) (as in effect after such date),

(ii) taxes paid or accrued in a taxable year beginning before January 1, 1987, with respect to income which was described in subparagraph (E) of paragraph (1) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) shall be treated as taxes paid or accrued with respect to income described in subparagraph (I) of paragraph (1) (as in effect after such date) except that

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(I) such taxes shall be treated as paid or accrued with respect to shipping income to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income,

(II) in the case of a person described in subparagraph (C)(i), such taxes shall be treated as paid or accrued with respect to financial services income to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income, and

(III) such taxes shall be treated as paid or accrued with respect to high withholding tax interest to the extent the taxpayer establishes to the satisfaction of the Secretary that such taxes were paid or accrued with respect to such income, and

(iii) taxes paid or accrued in a taxable year beginning before January 1, 1987, with respect to income described in any other subparagraph of paragraph (1) (as so in effect before such date) shall be treated as taxes paid or accrued with respect to income described in the corresponding subparagraph of paragraph (1) (as so in effect after such date).

(3) Look-thru in case of controlled foreign corporations. --

(A) In general. -- Except as otherwise provided in this paragraph, dividends, interest, rents, and royalties received or accrued by the taxpayer from a controlled foreign corporation in which the taxpayer is a United States shareholder shall not be treated as income in a separate category.

(B) Subpart F inclusions. -- Any amount included in gross income under section 951(a)(1)(A) shall be treated as income in a separate category to the extent the amount so included is attributable to income in such category.

(C) Interest, rents, and royalties. -- Any interest, rent, or royalty which is received or accrued from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as income in a separate category to the extent it is properly allocable (under regulations prescribed by the Secretary) to income of the controlled foreign corporation in such category.

(D) Dividends. -- Any dividend paid out of the earnings and profits of any controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as income in a separate category in proportion to the ratio of --

(i) the portion of the earnings and profits attributable to income in such category, to

(ii) the total amount of earnings and profits.

(E) Look-thru applies only where subpart F applies. -- If a controlled foreign corporation meets the requirements of section 954(b)(3)(A) (relating to de minimis rule) for any taxable year, for

purposes of this paragraph, none of its foreign base company income (as defined in section 954(a) without regard to section 954(b)(5)) and none of its gross insurance income (as defined in section 954(b)(3)(C)) for such taxable year shall be treated as income in a separate category, except that this sentence shall not apply to any income which (without regard to this sentence) would be treated as financial services income. Solely for purposes of applying subparagraph (D), passive income of a controlled foreign corporation shall not be treated as income in a separate category if the requirements of section 954(b)(4) are met with respect to such income.

(F) Separate category. -- For purposes of this paragraph --

(i) In general. -- Except as provided in clause (ii), the term "separate category" means any category of income described in subparagraph (A), (B), (C), (D), or (E) of paragraph (1).

(ii) Coordination with high-taxed income provisions. --

(I) In determining whether any income of a controlled foreign corporation is in a separate category, subclause (III) of paragraph (2)(A)(iii) shall not apply.

(II) Any income of the taxpayer which is treated as income in a separate category under this paragraph shall be so treated notwithstanding any provision of paragraph (2); except that the determination

of whether any amount is high-taxed income shall be made after the application of this paragraph.

(G) Dividend. -- For purposes of this paragraph, the term "dividend" includes any amount included in gross income in section 951(a)(1)(B). Any amount included in gross income under section 78 to the extent attributable to amounts included in gross income in section 951(a)(1)(A) shall not be treated as a dividend but shall be treated as included in gross income under section 951(a)(1)(A).

(H) Exception for certain high withholding tax interest. -- This paragraph shall not apply to any amount which --

(i) without regard to this paragraph, is high withholding tax interest (including any amount treated as high withholding tax interest under paragraph (2)(B)(iii)), and

(ii) would (but for this subparagraph) be treated as financial services income under this paragraph.

The amount to which this paragraph does not apply by reason of the preceding sentence shall not exceed the interest or equivalent income of the controlled foreign corporation taken into account in determining financial services income without regard to this subparagraph.

(I) Look-thru applies to passive foreign investment company inclusion. -- If --

(i) a passive foreign investment company is a controlled foreign corporation, and

(ii) the taxpayer is a United States shareholder in such controlled foreign corporation, any amount included in gross income under section 1293 shall be treated as income in a separate category to the extent such amount is attributable to income in such category.

(4) Controlled foreign corporation; United States shareholder. --- For purposes of this subsection --

(A) Controlled foreign corporation. -- The term "controlled foreign corporation" has the meaning given such term by section 957 (taking into account section 953(c)).

(5) Regulations. -- The Secretary shall prescribe such regulations as may be necessary or appropriate for the purposes of this subsection, including regulations

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(A) for the application of paragraph (3) and subsection (f)(5) in the case of income paid (or loans made) through 1 or more entities or between 2 or more chains of entities,

(B) preventing the manipulation of the character of income the effect of which is to avoid the purposes of this subsection, and

(C) providing that rules similar to the rules of paragraph (3)(C) shall apply to interest, rents,

and royalties received or accrued from entities which would be controlled foreign corporations if they were foreign corporations.

(e) Repealed.

(f) Recapture of overall foreign loss. --

(1) General rule. -- For puposes of this subpart and section 936, in the case of any taxpayer who sustains an overall foreign loss for any taxable year, that portion of the taxpayer's taxable income from sources without the United States for each succeeding taxable year which is equal to the lesser of --

(A) the amount of such loss (to the extent not used under this paragraph in prior taxable years), or

(B) 50 percent (or such larger percent as the taxpayer may choose) of the taxpayer's taxable income from sources without the United States for such succeeding taxable year, shall be treated as income from sources within the United States (and not as income from sources wihtout the United States).

(2) Overall foreign loss defined. -- For purposes of this subsection, the term "overall foreign loss" means the amount by which the gross income for the taxable year from sources without the United States (whether or not the taxpayer chooses the benefits of this subpart for such taxable year) for such year is exceeded by the sum of the deductions properly apportioned or allocated thereto, except that there shall not be taken into account --

(A) any net operating loss deduction allowable for such year under section 172(a), and

(B) any --

(i) foreign expropriation loss for such year, as defined in section 172(h), or

(ii) loss for such year which areises from fire, storm, shipwreck, or other casualty, or from theft,

to the extent such loss is not compensated for by insurance or otherwise.

(3) Dispositions. --

(A) In general. -- For purposes of this chapter, if property which has been used predominantly wihtout the United States in a trade or business is disposed of during any taxable year --

(i) the taxpayer, notwithstanding any other provision of this chapter (other than paragraph (1)), shall be deemed to have received and recognized taxable income from sources without the United States in the taxable year of the dispostion, by reason of such disposition, in an amount equal to the lesser of the excess of the fair market value of such property over the taxpayer's adjusted basis in such property or the remaining amount of the overall foreign losses which were not used under paragraph (1) for such taxable year or any prior taxable year, and

(ii) paragraph (1) shall be applied with respect to such income by substituting "100 percent" for "50 percent".

In determining for purposes of this subparagraph whether the predominant use of any property has been without the United States, there shall be taken into account use during the 3-year period ending on the date of the disposition (or, if shorter, the period during which the property has been used in the trade or business).

(B) Disposition defined and special rules. --

(i) For purposes of this subsection, the term "dispositon" includes a sale, exchange, distribution, or gift of property whether or not gain or loss is recognized on the transfer.

(ii) Any taxable income recognized solely by reason of subparagraph (A) shall have the same characterization it would have had if the taxpayer had sold or exchanged the property.

(iii) The Secretary shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect taxable incomee recognized solely by reason of subparagraph (A).

(C) Exceptions. -- Notwithstanding subparagraph (B), the term "disposition" does not include

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(i) a disposition of property which is not a material factor in the realization of income by the taxpayer, or

(ii) a disposition of property to a domestic corporation in a distribution or transfer described in section 381(a).

(4) Accumulation distributions of foreign trust. -- For purposes of this chapter, in the case of amounts of income from sources without the United States which are treated under section 666 (without regard to subsections (b) and (c) thereof if the taxpayer chose to take a deduction with respect to the amounts described in such subsections under section 667(d)(1)(B)) as having been distributed by a foreign trust in a preceding taxable year, that portion of such amounts equal to the amount of any overall foreign loss sustained by the beneficiary in a year prior to the taxable year of the beneficiary in which such distribution is received from the trust shall be treated as income from sources within the United States (and not income from sources without the United States) to the extent that such loss was not used under this subsection in prior taxable years, or in the current taxable year, against other income of the beneficiary.

(5) Treatment of separate limitation losses. --

(A) In general. The amount of the separate limitation losses for any taxable year shall reduce income from sources within the United States for such taxable year only to the extent the aggregate amount of such losses exceeds the aggregate amount of the separate limitation incomes for such taxable year.

(B) Allocation of losses. -- The separate limitation losses for any taxable year (to the extent such losses do not exceed the separate limitation incomes for such year) shall be allocated among (and operate to reduce) such incomes on a proportionate basis.

(C) Recaracterization of subsequent income. -- If --

(i) a separate limitation loss from any income category (hereinafter in this subparagraph referred to as "the loss category") was allocated to income from any other category under subparagraph (B), and

(ii) the loss category has income for a subsequent taxable year, such income (to the extent it does not exceed the aggregate separate limitation losses from the loss category not previously recharacterized under this subparagraph) shall be recharacterized as income from such other category in proportion to the prior reductions under subparagraph (B) in such other category not previously taken into account under this subparagraph. Nothing in the preceding sentence shall be construed as recharacterizing any tax.

(D) Special rules for losses from sources in the United States. -- Any loss from sources in the United States for any taxable year (to the extent such loss does not exceed the separate limitation incomes from such year) shall be allocated among (and operate to reduce) such incomes on a proportionate basis. This subparagraph shall be applied after subparagraph (B).

(E) Definitions. -- For purposes of this paragraph --

(i) Income category. -- The term "income category" means each separate category of income described in subsection (d)(1).

(ii) Separate limitation income. -- The term "separate limitation income" means, with respect to any income category, the taxable income from sources outside the United States, separately computed for such category.

(iii) Separate limitation loss. -- The term "separate limitation loss" means, with respect to any income category, the loss from such category determined under the principles of section 907(c)(4)(B).

(F) Dispositions. -- If any separate limitation laws for any taxable year is allocated against



any separate limitation income for such taxable year except to the extent provided in regulations, rules similar to the rules of paragraph (3) shall apply to any disposition of property if gain from such disposition would be in the income category with respect to which there was such separate limitation loss.

(g) Source rules in case of United States-owned foreign corporations. --

(1) In general. -- The following amounts which are derived from a United States-owned foreign corporation and which would be treated as derived from sources outside the United States without regard to this subsection shall, for purposes of this section, be treated as derived from sources within the United States to the extent provided in this subsection:

(A) Any amount included in gross income under --

(i) section 951(a) (relating to amounts included in gross income of United States shareholders),

(ii) section 551 (relating to foreign personal holding company income taxed to United States shareholders), or

(iii) section 1293 (relating to current taxation of income from qualified funds).

(B) Interest.

(C) Dividends.

(2) Subpart F and foreign personal holding or passive foreign investment company inclusions. -- Any amount described in subparagraph (A) of paragraph (1) shall be treated as derived from sources within the United States to the extent such amount is attributable to income of the United States-owned foreign corporation from sources within the United States.

(3) Certain interest allocable to United States source income. -- Any interest which --

(A) is paid or accrued by a United States-owned foreign corporation during any taxable year,

(B) is paid or accrued to a United States shareholder (as defined in section 951(b)) or a related person (within the meaning of section 267(b)) to such a shareholder, and

(C) is properly allocable (under regulations prescribed by the Secretary) to income of such foreign corporation for the taxable year from sources within the United States, shall be treated as derived from sources within the United States.

(4) Dividends. --

(A) In general. -- The United States source ratio of any dividend paid or accrued by a United States-owned foreign corporation shall be treated as derived from sources within the United States.

(B) United States source ratio. -- For purposes of subparagraph (A), the term "United States source ratio" means, with respect to any dividend paid out of the earnings and profits for any taxable year, a fraction --

(i) the numerator of which is the portion of the earnings and profits for such taxable year from sources within the United States, and

(ii) the denominator of which is the total amount of earnings and profits for such taxable year.

(5) Exception where United States-owned foreign corporation has small amount of United States source income. -- Paragraph (3) shall not apply to interest paid or accrued during any taxable year (and paragraph (4) shall not apply to any dividends paid out of the earnings and profits for such taxable year) if --

(A) the United States-owned foreign corporation has earnings and profits for such taxable year, and

(B) less than 10 percent of such earnings and profits is attributable to sources within the United States.

For purposes of the preceding sentence, earnings and profits shall be determined without any reduction

for interest described in paragraph (3) (determined without regard to subparagraph (C) thereof).

(6) United States-owned foreign corporation. -- For purposes of this subsection, the term "United States-owned foreign corporation" means any foreign corporation if 50 percent or more of --

(A) the total combined voting power of all classes of stock of such corporation entitled to vote, or

(B) the total value of the stock of such corporation, is held directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) by United States persons (as defined in section 7701(a)(30)).

(7) Dividend. -- For purposes of this subsection, the term "dividend" includes any gain treated as ordinary income under section 1246 or as a dividend under section 1248.

(8) Coordination with subsection (f). -- This subsection shall be applied before subsection (f).

(9) Treatment of certain domestic corporations. -- For purposes of this subsection --

(A) in the case of interest treated as not from sources within the United States under section 861(a)(1)(A), the corporation paying such interest shall be treated as a United States-owned foreign corporation, and

(B) in the case of any dividend treated as not from sources within the United States under section 861(a)(2)(A), the corporation paying such dividend shall be treated as a United States-owned foreign corporation.

(10) Coordination with treaties. --

(A) In general. -- If --

(i) any amount derived from a United States-owned foreign corporation would be treated as derived from sources within the United States under this subsection by reason of an item of income of such United States-owned foreign corporation,

(ii) under a treaty obligation of the United States (applied without regard to this subsection and by treating any amount included in gross income under section 951(a)(1) as a dividend), such amount would be treated as arising from sources outside the United States, and

(iii) the taxpayer chooses the benefits of this paragraph, this subsection shall not apply to such amount to the extent attributable to such item of income (but subsections (a), (b), and (c) of this section and sections 902, 907, and 960 shall be applied separately with respect to such amount to the extent so attributable).

(B) Special rule. -- Amounts included in gross income under section 951(a)(1) shall be treated as a dividend under subparagraph (A)(ii) only if dividends paid by each corporation (the stock in which is taken into account in determining whether the shareholder is a United States shareholder in the United States-owned foreign corporation), if paid to the United States shareholder, would be treated under a treaty obligation of the United States as arising from sources outside the United States (applied without regard to this subsection).

(11) Regulations. -- The Secretary shall prescribe such regulations as may be necessary or appropriate for purposes of this subsection, including --

(A) regulations for the application of this subsection in the case of interest or dividend payments through 1 or more entities, and

(B) regulations providing that this subsection shall apply to interest paid or accrued to any person (whether or not a United States shareholder).

(h) Coordination with nonrefundable personal credits. -- In the case of an individual, for purposes of subsection (a), the tax against which the credit is taken in such tax reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter.

(i) Limitation on Use of Deconsolidation to Avoid Foreign Tax Credit Limitations. -- If 2 or

more domestic corporations would be members of the same affiliated group if --

- (1) section 1504(b) were applied without regard to the exceptions contained therein, and
- (2) the constructive ownership rules of section 1563(e) applied for purposes of section

1504(a),

the Secretary may by regulations provide for resourcing the income of any of such corporations or for modifications to the consolidated return regulations to the extent that such resourcing or modifications are

necessary to prevent the avoidance of the provisions of this subpart.

- (j) Cross references. --

(1) For increase of limitation under subsection (a) for taxes paid with respect to amounts received which were included in the gross income of the taxpayer for a prior taxable year as a United States shareholder with respect to a controlled foreign corporation, see section 960(b).

(2) For modification of limitation under subsection (a) for purposes of determining the amount of credit which can be taken against the alternative minimum tax, see section 59(a).