

convertible. The preceding sentence shall not apply to the extent that the corporation can demonstrate to the satisfaction of the Secretary that such excess is attributable to the cost of borrowing and is not attributable to the conversion feature.

(b) Adjusted issue price

For purposes of subsection (a), the adjusted issue price is the issue price (as defined in sections 1273(b) and 1274) increased by any amount of discount deducted before repurchase, or decreased by any amount of premium included in gross income before repurchase by the issuing corporation.

(Added Pub. L. 91-172, title IV, §414(a), Dec. 30, 1969, 83 Stat. 612; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98-369, div. A, title I, §42(a)(5), July 18, 1984, 98 Stat. 557; Pub. L. 112-95, title XI, §1108(a), (b), Feb. 14, 2012, 126 Stat. 154; Pub. L. 113-295, div. A, title II, §§220(i), 221(a)(43), Dec. 19, 2014, 128 Stat. 4036, 4044.)

Editorial Notes

AMENDMENTS

2014—Subsec. (a). Pub. L. 113-295, §220(i), substituted “1563(a)(1)” for “1563(a)(1)”.

Subsec. (b). Pub. L. 113-295, §221(a)(43), which directed amendment of subsec. (b)(1) by striking out “, in the case of bonds or other evidences of indebtedness issued after February 28, 1913,” after “repurchase, or”, was executed by making the amendment in subsec. (b) to reflect the probable intent of Congress and the prior amendment by Pub. L. 112-95, §1108(b). See 2012 Amendment note below.

2012—Subsec. (a). Pub. L. 112-95, §1108(a), substituted “, or a corporation in the same parent-subsidiary controlled group (within the meaning of section 1563(a)(1) as” for “, or a corporation in control of, or controlled by,”.

Subsec. (b). Pub. L. 112-95, §1108(b), substituted “Adjusted issue price” for “Special rules” in heading and “For purposes of subsection (a),” for “For purposes of subsection (a)—” and par. (1) designation and heading, and “the adjusted issue price” for “The adjusted issue price”, and struck out par. (2), which defined “control” as having the meaning assigned to such term by section 368(c).

1984—Subsec. (b)(1). Pub. L. 98-369 substituted “sections 1273(b) and 1274” for “section 1232(b)”.

1976—Subsec. (a). Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section 221(a)(43) of Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2012 AMENDMENT

Pub. L. 112-95, title XI, §1108(c), Feb. 14, 2012, 126 Stat. 154, provided that: “The amendments made by this section [amending this section] shall apply to repurchases after the date of the enactment of this Act [Feb. 14, 2012].”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94-455, set out as a note under section 6013 of this title.

EFFECTIVE DATE

Pub. L. 91-172, title IV, §414(c), Dec. 30, 1969, 83 Stat. 613, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by this section [enacting this section] shall apply to a convertible bond or other convertible evidence of indebtedness repurchased after April 22, 1969, other than such a bond or other evidence of indebtedness repurchased pursuant to a binding obligation incurred on or before April 22, 1969, to repurchase such bond or other evidence of indebtedness at a specified call premium, but no inference shall be drawn from the fact that section 249 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a) of this section) does not apply to the repurchase of such convertible bond or other convertible evidence of indebtedness.”

§ 250. Foreign-derived intangible income and global intangible low-taxed income

(a) Allowance of deduction

(1) In general

In the case of a domestic corporation for any taxable year, there shall be allowed as a deduction an amount equal to the sum of—

(A) 37.5 percent of the foreign-derived intangible income of such domestic corporation for such taxable year, plus

(B) 50 percent of—

(i) the global intangible low-taxed income amount (if any) which is included in the gross income of such domestic corporation under section 951A for such taxable year, and

(ii) the amount treated as a dividend received by such corporation under section 78 which is attributable to the amount described in clause (i).

(2) Limitation based on taxable income

(A) In general

If, for any taxable year—

(i) the sum of the foreign-derived intangible income and the global intangible low-taxed income amount otherwise taken into account by the domestic corporation under paragraph (1), exceeds

(ii) the taxable income of the domestic corporation (determined without regard to this section),

then the amount of the foreign-derived intangible income and the global intangible low-taxed income amount so taken into account shall be reduced as provided in subparagraph (B).

(B) Reduction

For purposes of subparagraph (A)—

(i) foreign-derived intangible income shall be reduced by an amount which bears the same ratio to the excess described in subparagraph (A) as such foreign-derived intangible income bears to the sum described in subparagraph (A)(i), and

(ii) the global intangible low-taxed income amount shall be reduced by the remainder of such excess.

(3) Reduction in deduction for taxable years after 2025

In the case of any taxable year beginning after December 31, 2025, paragraph (1) shall be applied by substituting—

- (A) “21.875 percent” for “37.5 percent” in subparagraph (A), and
- (B) “37.5 percent” for “50 percent” in subparagraph (B).

(b) Foreign-derived intangible income

For purposes of this section—

(1) In general

The foreign-derived intangible income of any domestic corporation is the amount which bears the same ratio to the deemed intangible income of such corporation as—

- (A) the foreign-derived deduction eligible income of such corporation, bears to
- (B) the deduction eligible income of such corporation.

(2) Deemed intangible income

For purposes of this subsection—

(A) In general

The term “deemed intangible income” means the excess (if any) of—

- (i) the deduction eligible income of the domestic corporation, over
- (ii) the deemed tangible income return of the corporation.

(B) Deemed tangible income return

The term “deemed tangible income return” means, with respect to any corporation, an amount equal to 10 percent of the corporation’s qualified business asset investment (as defined in section 951A(d), determined by substituting “deduction eligible income” for “tested income” in paragraph (2) thereof and without regard to whether the corporation is a controlled foreign corporation).

(3) Deduction eligible income

(A) In general

The term “deduction eligible income” means, with respect to any domestic corporation, the excess (if any) of—

- (i) gross income of such corporation determined without regard to—
 - (I) any amount included in the gross income of such corporation under section 951(a)(1),
 - (II) the global intangible low-taxed income included in the gross income of such corporation under section 951A,
 - (III) any financial services income (as defined in section 904(d)(2)(D)) of such corporation,
 - (IV) any dividend received from a corporation which is a controlled foreign corporation of such domestic corporation,
 - (V) any domestic oil and gas extraction income of such corporation, and
 - (VI) any foreign branch income (as defined in section 904(d)(2)(J)), over
- (ii) the deductions (including taxes) properly allocable to such gross income.

(B) Domestic oil and gas extraction income

For purposes of subparagraph (A), the term “domestic oil and gas extraction income” means income described in section 907(c)(1), determined by substituting “within the United States” for “without the United States”.

(4) Foreign-derived deduction eligible income

The term “foreign-derived deduction eligible income” means, with respect to any taxpayer for any taxable year, any deduction eligible income of such taxpayer which is derived in connection with—

- (A) property—
 - (i) which is sold by the taxpayer to any person who is not a United States person, and
 - (ii) which the taxpayer establishes to the satisfaction of the Secretary is for a foreign use, or
- (B) services provided by the taxpayer which the taxpayer establishes to the satisfaction of the Secretary are provided to any person, or with respect to property, not located within the United States.

(5) Rules relating to foreign use property or services

For purposes of this subsection—

(A) Foreign use

The term “foreign use” means any use, consumption, or disposition which is not within the United States.

(B) Property or services provided to domestic intermediaries

(i) Property

If a taxpayer sells property to another person (other than a related party) for further manufacture or other modification within the United States, such property shall not be treated as sold for a foreign use even if such other person subsequently uses such property for a foreign use.

(ii) Services

If a taxpayer provides services to another person (other than a related party) located within the United States, such services shall not be treated as described in paragraph (4)(B) even if such other person uses such services in providing services which are so described.

(C) Special rules with respect to related party transactions

(i) Sales to related parties

If property is sold to a related party who is not a United States person, such sale shall not be treated as for a foreign use unless—

- (I) such property is ultimately sold by a related party, or used by a related party in connection with property which is sold or the provision of services, to another person who is an unrelated party who is not a United States person, and
- (II) the taxpayer establishes to the satisfaction of the Secretary that such property is for a foreign use.

For purposes of this clause, a sale of property shall be treated as a sale of each of the components thereof.

(ii) Service provided to related parties

If a service is provided to a related party who is not located in the United States, such service shall not be treated described¹ in subparagraph (A)(ii)² unless the taxpayer established to the satisfaction of the Secretary that such service is not substantially similar to services provided by such related party to persons located within the United States.

(D) Related party

For purposes of this paragraph, the term “related party” means any member of an affiliated group as defined in section 1504(a), determined—

- (i) by substituting “more than 50 percent” for “at least 80 percent” each place it appears, and
- (ii) without regard to paragraphs (2) and (3) of section 1504(b).

Any person (other than a corporation) shall be treated as a member of such group if such person is controlled by members of such group (including any entity treated as a member of such group by reason of this sentence) or controls any such member. For purposes of the preceding sentence, control shall be determined under the rules of section 954(d)(3).

(E) Sold

For purposes of this subsection, the terms “sold”, “sells”, and “sale” shall include any lease, license, exchange, or other disposition.

(c) Regulations

The Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out the provisions of this section.

(Added Pub. L. 115–97, title I, §14202(a), Dec. 22, 2017, 131 Stat. 2213.)

Editorial Notes

PRIOR PROVISIONS

A prior section 250, added Pub. L. 91–518, title IX, §901(a), Oct. 30, 1970, 84 Stat. 1341; amended Pub. L. 93–496, §12, Oct. 28, 1974, 88 Stat. 1531; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 95–473, §2(a)(2)(C), Oct. 17, 1978, 92 Stat. 1464; Pub. L. 96–454, §3(b)(1), Oct. 15, 1980, 94 Stat. 2012; Pub. L. 97–261, §6(d)(3), Sept. 20, 1982, 96 Stat. 1107; Pub. L. 99–521, §4(3), Oct. 22, 1986, 100 Stat. 2993, related to certain payments to National Railroad Passenger Corporation, prior to repeal by Pub. L. 101–508, title XI, §11801(a)(15), Nov. 5, 1990, 104 Stat. 1388–520.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2017, see section 14202(c) of Pub. L. 115–97, set out as an Effective Date of 2017 Amendment note under section 172 of this title.

¹ So in original. Probably should be preceded by “as”.

² So in original. Probably should be “(B)(ii)”.

PART IX—ITEMS NOT DEDUCTIBLE

Sec.	
261.	General rule for disallowance of deductions.
262.	Personal, living, and family expenses.
263.	Capital expenditures.
263A.	Capitalization and inclusion in inventory costs of certain expenses.
264.	Certain amounts paid in connection with insurance contracts.
265.	Expenses and interest relating to tax-exempt income.
266.	Carrying charges.
267.	Losses, expenses, and interest with respect to transactions between related taxpayers.
267A.	Certain related party amounts paid or accrued in hybrid transactions or with hybrid entities.
268.	Sale of land with unharvested crop.
269.	Acquisitions made to evade or avoid income tax.
269A.	Personal service corporations formed or availed of to avoid or evade income tax.
269B.	Stapled entities.
[270.	Repealed.]
271.	Debts owed by political parties, etc.
272.	Disposal of coal or domestic iron ore.
273.	Holders of life or terminable interest.
274.	Disallowance of certain entertainment, etc., expenses.
275.	Certain taxes.
276.	Certain indirect contributions to political parties.
277.	Deductions incurred by certain membership organizations in transactions with members.
[278.	Repealed.]
279.	Interest on indebtedness incurred by corporation to acquire stock or assets of another corporation.
[280.	Repealed.]
280A.	Disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.
280B.	Demolition of structures.
280C.	Certain expenses for which credits are allowable.
[280D.	Repealed.]
280E.	Expenditures in connection with the illegal sale of drugs.
280F.	Limitation on depreciation for luxury automobiles; limitation where certain property used for personal purposes.
280G.	Golden parachute payments.
280H.	Limitation on certain amounts paid to employee-owners by personal service corporations electing alternative taxable years.

Editorial Notes

AMENDMENTS

2018—Pub. L. 115–141, div. U, title IV, §401(a)(59), Mar. 23, 2018, 132 Stat. 1187, substituted “Limitation on certain amounts paid to employee-owners by personal service corporations electing alternative taxable years” for “Limitation on certain amounts paid to owner-employees by personal service corporations electing alternative taxable years” in item 280H.

2017—Pub. L. 115–97, title I, §14222(b), Dec. 22, 2017, 131 Stat. 2220, added item 267A.

1996—Pub. L. 104–188, title I, §1704(t)(55), Aug. 20, 1996, 110 Stat. 1890, provided that section 11813(b)(13)(F) of Pub. L. 101–508 shall be applied as if “tax” appeared after “investment” in the material proposed to be stricken. See 1990 Amendment note below.

1990—Pub. L. 101–508, title XI, §11813(b)(13)(F), Nov. 5, 1990, 104 Stat. 1388–555, which directed the striking out of “investment credit and” in item 280F, was executed by striking out “investment tax credit and” after “Limitation on”. See 1996 Amendment note above.