

rate of tax than are nationals, residents, or corporations of such foreign country (or a similar class of such nationals, residents, or corporations) under similar circumstances;

(2) such foreign country, when requested by the United States to do so, has not acted to eliminate such higher effective rate of tax; and

(3) it is in the public interest to adjust, in accordance with the provisions of this subsection, the effective rate of tax imposed by this subtitle on similar income of nationals, residents, or corporations of such foreign country (or such similar class of such nationals, residents, or corporations),

the President shall proclaim that the tax on similar income of nationals, residents, or corporations of such foreign country (or such similar class of such nationals, residents, or corporations) shall, for taxable years beginning after such proclamation, be adjusted so as to cause the effective rate of tax imposed by this subtitle on such similar income to be substantially equal to the effective rate of tax imposed by such foreign country on such item of income of citizens of the United States or domestic corporations (or such class of citizens or corporations). In implementing a proclamation made under this subsection, the effective rate of tax imposed by this subtitle on an item of income may be adjusted by the disallowance, in whole or in part, of any deduction, credit, or exemption which would otherwise be allowed with respect to that item of income or by increasing the rate of tax otherwise applicable to that item of income.

(c) Alleviation of more burdensome or discriminatory taxes

Whenever the President finds that—

(1) the laws of any foreign country with respect to which the President has made a proclamation under subsection (a) have been modified so that citizens of the United States not residents of such foreign country or domestic corporations are no longer subject to more burdensome taxes on the item of income derived by such citizens or corporations from sources within such foreign country, or

(2) the laws of any foreign country with respect to which the President has made a proclamation under subsection (b) have been modified so that citizens of the United States or domestic corporations (or any class of such citizens or corporations) are no longer subject to a higher effective rate of tax on the item of income,

he shall proclaim that the tax imposed by this subtitle on the similar income of nationals, residents, or corporations of such foreign country shall, for any taxable year beginning after such proclamation, be determined under this subtitle without regard to such subsection.

(d) Notification of Congress required

No proclamation shall be issued by the President pursuant to this section unless, at least 30 days prior to such proclamation, he has notified the Senate and the House of Representatives of his intention to issue such proclamation.

(e) Implementation by regulations

The Secretary shall prescribe such regulations as he deems necessary or appropriate to implement this section.

(Added Pub. L. 89-809, title I, §105(b), Nov. 13, 1966, 80 Stat. 1563; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

Editorial Notes

REFERENCES IN TEXT

The date of enactment of this section, referred to in the provisions following subsec. (a)(3), is the date of enactment of Pub. L. 89-809, which was approved Nov. 13, 1966.

AMENDMENTS

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section applicable with respect to taxable years beginning after Dec. 31, 1966, see section 105(d) of Pub. L. 89-809, set out as an Effective Date of 1966 Amendment note under section 894 of this title.

§ 897. Disposition of investment in United States real property

(a) General rule

(1) Treatment as effectively connected with United States trade or business

For purposes of this title, gain or loss of a nonresident alien individual or a foreign corporation from the disposition of a United States real property interest shall be taken into account—

(A) in the case of a nonresident alien individual, under section 871(b)(1), or

(B) in the case of a foreign corporation, under section 882(a)(1),

as if the taxpayer were engaged in a trade or business within the United States during the taxable year and as if such gain or loss were effectively connected with such trade or business.

(2) Minimum tax on nonresident alien individuals

(A) In general

In the case of any nonresident alien individual, the taxable excess for purposes of section 55(b)(1) shall not be less than the lesser of—

(i) the individual's alternative minimum taxable income (as defined in section 55(b)(1)(D)) for the taxable year, or

(ii) the individual's net United States real property gain for the taxable year.

(B) Net United States real property gain

For purposes of subparagraph (A), the term “net United States real property gain” means the excess of—

(i) the aggregate of the gains for the taxable year from dispositions of United States real property interests, over

(ii) the aggregate of the losses for the taxable year from dispositions of such interests.

(b) Limitation on losses of individuals

In the case of an individual, a loss shall be taken into account under subsection (a) only to the extent such loss would be taken into account under section 165(c) (determined without regard to subsection (a) of this section).

(c) United States real property interest

For purposes of this section—

(1) United States real property interest**(A) In general**

Except as provided in subparagraph (B) or subsection (k), the term “United States real property interest” means—

(i) an interest in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the Virgin Islands, and

(ii) any interest (other than an interest solely as a creditor) in any domestic corporation unless the taxpayer establishes (at such time and in such manner as the Secretary by regulations prescribes) that such corporation was at no time a United States real property holding corporation during the shorter of—

- (I) the period after June 18, 1980, during which the taxpayer held such interest, or
- (II) the 5-year period ending on the date of the disposition of such interest.

(B) Exclusion for interest in certain corporations

The term “United States real property interest” does not include any interest in a corporation if—

(i) as of the date of the disposition of such interest, such corporation did not hold any United States real property interests,

(ii) all of the United States real property interests held by such corporation at any time during the shorter of the periods described in subparagraph (A)(ii)—

(I) were disposed of in transactions in which the full amount of the gain (if any) was recognized, or

(II) ceased to be United States real property interests by reason of the application of this subparagraph to 1 or more other corporations, and

(iii) neither such corporation nor any predecessor of such corporation was a regulated investment company or a real estate investment trust at any time during the shorter of the periods described in subparagraph (A)(ii).

(2) United States real property holding corporation

The term “United States real property holding corporation” means any corporation if—

(A) the fair market value of its United States real property interests equals or exceeds 50 percent of

(B) the fair market value of—

(i) its United States real property interests,

(ii) its interests in real property located outside the United States, plus

(iii) any other of its assets which are used or held for use in a trade or business.

(3) Exception for stock regularly traded on established securities markets

If any class of stock of a corporation is regularly traded on an established securities market, stock of such class shall be treated as a United States real property interest only in the case of a person who, at some time during the shorter of the periods described in paragraph (1)(A)(ii), held more than 5 percent of such class of stock.

(4) Interests held by foreign corporations and by partnerships, trusts, and estates

For purposes of determining whether any corporation is a United States real property holding corporation—

(A) Foreign corporations

Paragraph (1)(A)(ii) shall be applied by substituting “any corporation (whether foreign or domestic)” for “any domestic corporation”.

(B) Assets held by partnerships, etc.

Under regulations prescribed by the Secretary, assets held by a partnership, trust, or estate shall be treated as held proportionately by its partners or beneficiaries. Any asset treated as held by a partner or beneficiary by reason of this subparagraph which is used or held for use by the partnership, trust, or estate in a trade or business shall be treated as so used or held by the partner or beneficiary. Any asset treated as held by a partner or beneficiary by reason of this subparagraph shall be so treated for purposes of applying this subparagraph successively to partnerships, trusts, or estates which are above the first partnership, trust, or estate in a chain thereof.

(5) Treatment of controlling interests**(A) In general**

Under regulations, for purposes of determining whether any corporation is a United States real property holding corporation, if any corporation (hereinafter in this paragraph referred to as the “first corporation”) holds a controlling interest in a second corporation—

(i) the stock which the first corporation holds in the second corporation shall not be taken into account,

(ii) the first corporation shall be treated as holding a portion of each asset of the second corporation equal to the percentage of the fair market value of the stock of the second corporation represented by the stock held by the first corporation, and

(iii) any asset treated as held by the first corporation by reason of clause (ii) which is used or held for use by the second corporation in a trade or business shall be treated as so used or held by the first corporation.

Any asset treated as held by the first corporation by reason of the preceding sentence shall be so treated for purposes of applying the preceding sentence successively to cor-

porations which are above the first corporation in a chain of corporations.

(B) Controlling interest

For purposes of subparagraph (A), the term “controlling interest” means 50 percent or more of the fair market value of all classes of stock of a corporation.

(6) Other special rules

(A) Interest in real property

The term “interest in real property” includes fee ownership and co-ownership of land or improvements thereon, leaseholds of land or improvements thereon, options to acquire land or improvements thereon, and options to acquire leaseholds of land or improvements thereon.

(B) Real property includes associated personal property

The term “real property” includes movable walls, furnishings, and other personal property associated with the use of the real property.

(C) Constructive ownership rules

For purposes of determining under paragraph (3) whether any person holds more than 5 percent of any class of stock and of determining under paragraph (5) whether a person holds a controlling interest in any corporation, section 318(a) shall apply (except that paragraphs (2)(C) and (3)(C) of section 318(a) shall be applied by substituting “5 percent” for “50 percent”).

(d) Treatment of distributions by foreign corporations

(1) In general

Except to the extent otherwise provided in regulations, notwithstanding any other provision of this chapter, gain shall be recognized by a foreign corporation on the distribution (including a distribution in liquidation or redemption) of a United States real property interest in an amount equal to the excess of the fair market value of such interest (as of the time of the distribution) over its adjusted basis.

(2) Exceptions

Gain shall not be recognized under paragraph (1)—

(A) if—

(i) at the time of the receipt of the distributed property, the distributee would be subject to taxation under this chapter on a subsequent disposition of the distributed property, and

(ii) the basis of the distributed property in the hands of the distributee is no greater than the adjusted basis of such property before the distribution, increased by the amount of gain (if any) recognized by the distributing corporation, or

(B) if such nonrecognition is provided in regulations prescribed by the Secretary under subsection (e)(2).

(e) Coordination with nonrecognition provisions

(1) In general

Except to the extent otherwise provided in subsection (d) and paragraph (2) of this sub-

section, any nonrecognition provision shall apply for purposes of this section to a transaction only in the case of an exchange of a United States real property interest for an interest the sale of which would be subject to taxation under this chapter.

(2) Regulations

The Secretary shall prescribe regulations (which are necessary or appropriate to prevent the avoidance of Federal income taxes) providing—

(A) the extent to which nonrecognition provisions shall, and shall not, apply for purposes of this section, and

(B) the extent to which—

(i) transfers of property in reorganization, and

(ii) changes in interests in, or distributions from, a partnership, trust, or estate,

shall be treated as sales of property at fair market value.

(3) Nonrecognition provision defined

For purposes of this subsection, the term “nonrecognition provision” means any provision of this title for not recognizing gain or loss.

[f] Repealed. Pub. L. 104-188, title I, § 1702(g)(2), Aug. 20, 1996, 110 Stat. 1873]

(g) Special rule for sales of interest in partnerships, trusts, and estates

Under regulations prescribed by the Secretary, the amount of any money, and the fair market value of any property, received by a nonresident alien individual or foreign corporation in exchange for all or part of its interest in a partnership, trust, or estate shall, to the extent attributable to United States real property interests, be considered as an amount received from the sale or exchange in the United States of such property.

(h) Special rules for certain investment entities

For purposes of this section—

(1) Look-through of distributions

Any distribution by a qualified investment entity to a nonresident alien individual, a foreign corporation, or other qualified investment entity shall, to the extent attributable to gain from sales or exchanges by the qualified investment entity of United States real property interests, be treated as gain recognized by such nonresident alien individual, foreign corporation, or other qualified investment entity from the sale or exchange of a United States real property interest. Notwithstanding the preceding sentence, any distribution by a qualified investment entity to a nonresident alien individual or a foreign corporation with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if such individual or corporation did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of such distribution.

(2) Sale of stock in domestically controlled entity not taxed

The term “United States real property interest” does not include any interest in a domestically controlled qualified investment entity.

(3) Distributions by domestically controlled qualified investment entities

In the case of a domestically controlled qualified investment entity, rules similar to the rules of subsection (d) shall apply to the foreign ownership percentage of any gain.

(4) Definitions and special rules**(A) Qualified investment entity**

The term “qualified investment entity” means—

- (i) any real estate investment trust, and
- (ii) any regulated investment company which is a United States real property holding corporation or which would be a United States real property holding corporation if the exceptions provided in subsections (c)(3) and (h)(2) did not apply to interests in any real estate investment trust or regulated investment company.

(B) Domestically controlled

The term “domestically controlled qualified investment entity” means any qualified investment entity in which at all times during the testing period less than 50 percent in value of the stock was held directly or indirectly by foreign persons.

(C) Foreign ownership percentage

The term “foreign ownership percentage” means that percentage of the stock of the qualified investment entity which was held (directly or indirectly) by foreign persons at the time during the testing period during which the direct and indirect ownership of stock by foreign persons was greatest.

(D) Testing period

The term “testing period” means whichever of the following periods is the shortest:

- (i) the period beginning on June 19, 1980, and ending on the date of the disposition or of the distribution, as the case may be,
- (ii) the 5-year period ending on the date of the disposition or of the distribution, as the case may be, or
- (iii) the period during which the qualified investment entity was in existence.

(E) Special ownership rules

For purposes of determining the holder of stock under subparagraphs (B) and (C)—

- (i) in the case of any class of stock of the qualified investment entity which is regularly traded on an established securities market in the United States, a person holding less than 5 percent of such class of stock at all times during the testing period shall be treated as a United States person unless the qualified investment entity has actual knowledge that such person is not a United States person,
- (ii) any stock in the qualified investment entity held by another qualified investment entity—

(I) any class of stock of which is regularly traded on an established securities market, or

(II) which is a regulated investment company which issues redeemable securities (within the meaning of section 2 of the Investment Company Act of 1940),

shall be treated as held by a foreign person, except that if such other qualified investment entity is domestically controlled (determined after application of this subparagraph), such stock shall be treated as held by a United States person, and

(iii) any stock in the qualified investment entity held by any other qualified investment entity not described in subclause (I) or (II) of clause (ii) shall only be treated as held by a United States person in proportion to the stock of such other qualified investment entity which is (or is treated under clause (ii) or (iii) as) held by a United States person.

(5) Treatment of certain wash sale transactions**(A) In general**

If an interest in a domestically controlled qualified investment entity is disposed of in an applicable wash sale transaction, the taxpayer shall, for purposes of this section, be treated as having gain from the sale or exchange of a United States real property interest in an amount equal to the portion of the distribution described in subparagraph (B) with respect to such interest which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1).

(B) Applicable wash sales transaction

For purposes of this paragraph—

(i) In general

The term “applicable wash sales transaction” means any transaction (or series of transactions) under which a nonresident alien individual, foreign corporation, or qualified investment entity—

(I) disposes of an interest in a domestically controlled qualified investment entity during the 30-day period preceding the ex-dividend date of a distribution which is to be made with respect to the interest and any portion of which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1), and

(II) acquires, or enters into a contract or option to acquire, a substantially identical interest in such entity during the 61-day period beginning with the 1st day of the 30-day period described in subclause (I).

For purposes of subclause (II), a nonresident alien individual, foreign corporation, or qualified investment entity shall be treated as having acquired any interest acquired by a person related (within the meaning of section 267(b) or 707(b)(1)) to

the individual, corporation, or entity, and any interest which such person has entered into any contract or option to acquire.

(ii) Application to substitute dividend and similar payments

Subparagraph (A) shall apply to—

(I) any substitute dividend payment (within the meaning of section 861), or

(II) any other similar payment specified in regulations which the Secretary determines necessary to prevent avoidance of the purposes of this paragraph.

The portion of any such payment treated by the taxpayer as gain from the sale or exchange of a United States real property interest under subparagraph (A) by reason of this clause shall be equal to the portion of the distribution such payment is in lieu of which would have been so treated but for the transaction giving rise to such payment.

(iii) Exception where distribution actually received

A transaction shall not be treated as an applicable wash sales transaction if the nonresident alien individual, foreign corporation, or qualified investment entity receives the distribution described in clause (i)(I) with respect to either the interest which was disposed of, or acquired, in the transaction.

(iv) Exception for certain publicly traded stock

A transaction shall not be treated as an applicable wash sales transaction if it involves the disposition of any class of stock in a qualified investment entity which is regularly traded on an established securities market within the United States but only if the nonresident alien individual, foreign corporation, or qualified investment entity did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of the distribution described in clause (i)(I).

(i) Election by foreign corporation to be treated as domestic corporation

(1) In general

If—

(A) a foreign corporation holds a United States real property interest, and

(B) under any treaty obligation of the United States the foreign corporation is entitled to nondiscriminatory treatment with respect to that interest,

then such foreign corporation may make an election to be treated as a domestic corporation for purposes of this section, section 1445, and section 6039C.

(2) Revocation only with consent

Any election under paragraph (1), once made, may be revoked only with the consent of the Secretary.

(3) Making of election

An election under paragraph (1) may be made only—

(A) if all of the owners of all classes of interests (other than interests solely as a creditor) in the foreign corporation at the time of the election consent to the making of the election and agree that gain, if any, from the disposition of such interest after June 18, 1980, which would be taken into account under subsection (a) shall be taxable notwithstanding any provision to the contrary in a treaty to which the United States is a party, and

(B) subject to such other conditions as the Secretary may prescribe by regulations with respect to the corporation or its shareholders.

In the case of a class of interest (other than an interest solely as a creditor) which is regularly traded on an established securities market, the consent described in subparagraph (A) need only be made by any person if such person held more than 5 percent of such class of interest at some time during the shorter of the periods described in subsection (c)(1)(A)(ii). The constructive ownership rules of subsection (c)(6)(C) shall apply in determining whether a person held more than 5 percent of a class of interest.

(4) Exclusive method of claiming non-discrimination

The election provided by paragraph (1) shall be the exclusive remedy for any person claiming discriminatory treatment with respect to this section, section 1445, and section 6039C.

(j) Certain contributions to capital

Except to the extent otherwise provided in regulations, gain shall be recognized by a nonresident alien individual or foreign corporation on the transfer of a United States real property interest to a foreign corporation if the transfer is made as paid in surplus or as a contribution to capital, in the amount of the excess of—

(1) the fair market value of such property transferred, over

(2) the sum of—

(A) the adjusted basis of such property in the hands of the transferor, plus

(B) the amount of gain, if any, recognized to the transferor under any other provision at the time of the transfer.

(k) Special rules relating to real estate investment trusts

(1) Increase in percentage ownership for exceptions for persons holding publicly traded stock

(A) Dispositions

In the case of any disposition of stock in a real estate investment trust, paragraphs (3) and (6)(C) of subsection (c) shall each be applied by substituting “more than 10 percent” for “more than 5 percent”.

(B) Distributions

In the case of any distribution from a real estate investment trust, subsection (h)(1) shall be applied by substituting “10 percent” for “5 percent”.

(2) Stock held by qualified shareholders not treated as United States real property interest

(A) In general

Except as provided in subparagraph (B)—

(i) stock of a real estate investment trust which is held directly (or indirectly through 1 or more partnerships) by a qualified shareholder shall not be treated as a United States real property interest, and

(ii) notwithstanding subsection (h)(1), any distribution to a qualified shareholder shall not be treated as gain recognized from the sale or exchange of a United States real property interest to the extent the stock of the real estate investment trust held by such qualified shareholder is not treated as a United States real property interest under clause (i).

(B) Exception

In the case of a qualified shareholder with one or more applicable investors—

(i) subparagraph (A)(i) shall not apply to the applicable percentage of the stock of the real estate investment trust held by the qualified shareholder, and

(ii) the applicable percentage of the amounts realized by the qualified shareholder with respect to any disposition of stock in the real estate investment trust or with respect to any distribution from the real estate investment trust attributable to gain from sales or exchanges of a United States real property interest shall be treated as amounts realized from the disposition of United States real property interests.

(C) Special rule for certain distributions treated as sale or exchange

If a distribution by a real estate investment trust is treated as a sale or exchange of stock under section 301(c)(3), 302, or 331 with respect to a qualified shareholder—

(i) in the case of an applicable investor, subparagraph (B) shall apply with respect to such distribution, and

(ii) in the case of any other person, such distribution shall be treated under section 857(b)(3)(F)¹ as a dividend from a real estate investment trust notwithstanding any other provision of this title.

(D) Applicable investor

For purposes of this subsection, the term “applicable investor” means, with respect to any qualified shareholder holding stock in a real estate investment trust, a person (other than a qualified shareholder) which—

(i) holds an interest (other than an interest solely as a creditor) in such qualified shareholder, and

(ii) holds more than 10 percent of the stock of such real estate investment trust (whether or not by reason of the person’s ownership interest in the qualified shareholder).

(E) Constructive ownership rules

For purposes of subparagraphs (B)(i) and (D), the constructive ownership rules under subsection (c)(6)(C) shall apply.

(F) Applicable percentage

For purposes of subparagraph (B), the term “applicable percentage” means the percentage of the value of the interests (other than interests held solely as a creditor) in the qualified shareholder held by applicable investors.

(3) Qualified shareholder

For purposes of this subsection—

(A) In general

The term “qualified shareholder” means a foreign person which—

(i)(I) is eligible for benefits of a comprehensive income tax treaty with the United States which includes an exchange of information program and the principal class of interests of which is listed and regularly traded on 1 or more recognized stock exchanges (as defined in such comprehensive income tax treaty), or

(II) is a foreign partnership that is created or organized under foreign law as a limited partnership in a jurisdiction that has an agreement for the exchange of information with respect to taxes with the United States and has a class of limited partnership units which is regularly traded on the New York Stock Exchange or Nasdaq Stock Market and such class of limited partnership units value is greater than 50 percent of the value of all the partnership units,

(ii) is a qualified collective investment vehicle, and

(iii) maintains records on the identity of each person who, at any time during the foreign person’s taxable year, holds directly 5 percent or more of the class of interest described in subclause (I) or (II) of clause (i), as the case may be.

(B) Qualified collective investment vehicle

For purposes of this subsection, the term “qualified collective investment vehicle” means a foreign person—

(i) which—

(I) is eligible for benefits under the comprehensive income tax treaty described in subparagraph (A)(i)(I), but only if the dividends article of such treaty imposes conditions on the benefits allowable in the case of dividends paid by a real estate investment trust, and

(II) is eligible under such treaty for a reduced rate of withholding with respect to ordinary dividends paid by a real estate investment trust even if such person holds more than 10 percent of the stock of such real estate investment trust,

(ii) which—

(I) is a publicly traded partnership (as defined in section 7704(b)) to which subsection (a) of section 7704 does not apply,

(II) is a withholding foreign partnership for purposes of chapters 3, 4, and 61, and

¹ See References in Text note below.

(III) if such foreign partnership were a domestic corporation, would be a United States real property holding corporation (determined without regard to paragraph (1)) at any time during the 5-year period ending on the date of disposition of, or distribution with respect to, such partnership's interests in a real estate investment trust, or

(iii) which is designated as a qualified collective investment vehicle by the Secretary and is either—

(I) fiscally transparent within the meaning of section 894, or

(II) required to include dividends in its gross income, but entitled to a deduction for distributions to persons holding interests (other than interests solely as a creditor) in such foreign person.

(4) Partnership allocations

(A) In general

For the purposes of this subsection, in the case of an applicable investor who is a nonresident alien individual or a foreign corporation and is a partner in a partnership that is a qualified shareholder, if such partner's proportionate share of USRPI gain for the taxable year exceeds such partner's distributive share of USRPI gain for the taxable year, then

(i) such partner's distributive share of the amount of gain taken into account under subsection (a)(1) by the partner for the taxable year (determined without regard to this paragraph) shall be increased by the amount of such excess, and

(ii) such partner's distributive share of items of income or gain for the taxable year that are not treated as gain taken into account under subsection (a)(1) (determined without regard to this paragraph) shall be decreased (but not below zero) by the amount of such excess.

(B) USRPI gain

For the purposes of this paragraph, the term "USRPI gain" means the excess (if any) of—

(i) the sum of—

(I) any gain recognized from the disposition of a United States real property interest, and

(II) any distribution by a real estate investment trust that is treated as gain recognized from the sale or exchange of a United States real property interest, over

(ii) any loss recognized from the disposition of a United States real property interest.

(C) Proportionate share of USRPI gain

For purposes of this paragraph, an applicable investor's proportionate share of USRPI gain shall be determined on the basis of such investor's share of partnership items of income or gain (excluding gain allocated under section 704(c)), whichever results in the largest proportionate share. If the investor's share of partnership items of income or gain

(excluding gain allocated under section 704(c)) may vary during the period such investor is a partner in the partnership, such share shall be the highest share such investor may receive.

(I) Exception for qualified foreign pension funds

(1) In general

For purposes of this section, a qualified foreign pension fund shall not be treated as a nonresident alien individual or a foreign corporation. For purposes of the preceding sentence, an entity all the interests of which are held by a qualified foreign pension fund shall be treated as such a fund.

(2) Qualified foreign pension fund

For purposes of this subsection, the term "qualified foreign pension fund" means any trust, corporation, or other organization or arrangement—

(A) which is created or organized under the law of a country other than the United States,

(B) which is established—

(i) by such country (or one or more political subdivisions thereof) to provide retirement or pension benefits to participants or beneficiaries that are current or former employees (including self-employed individuals) or persons designated by such employees, as a result of services rendered by such employees to their employers, or

(ii) by one or more employers to provide retirement or pension benefits to participants or beneficiaries that are current or former employees (including self-employed individuals) or persons designated by such employees in consideration for services rendered by such employees to such employers,

(C) which does not have a single participant or beneficiary with a right to more than five percent of its assets or income,

(D) which is subject to government regulation and with respect to which annual information about its beneficiaries is provided, or is otherwise available, to the relevant tax authorities in the country in which it is established or operates, and

(E) with respect to which, under the laws of the country in which it is established or operates—

(i) contributions to such trust, corporation, organization, or arrangement which would otherwise be subject to tax under such laws are deductible or excluded from the gross income of such entity or arrangement or taxed at a reduced rate, or

(ii) taxation of any investment income of such trust, corporation, organization or arrangement is deferred, or such income is excluded from the gross income of such entity or arrangement or is taxed at a reduced rate.

(3) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(Added Pub. L. 96-499, title XI, §1122(a), Dec. 5, 1980, 94 Stat. 2682; amended Pub. L. 97-34, title

VIII, § 831(a)(1), (b)–(d), (f), (g), Aug. 13, 1981, 95 Stat. 352–354; Pub. L. 97–248, title II, § 201(d)(6), formerly § 201(c)(6), Sept. 3, 1982, 96 Stat. 419, renumbered § 201(d)(6), Pub. L. 97–448, title III, § 306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 99–514, title VI, § 631(e)(12), title VII, § 701(e)(4)(G), title XVIII, § 1810(f)(1), Oct. 22, 1986, 100 Stat. 2275, 2343, 2826; Pub. L. 100–647, title I, § 1006(e)(19), Nov. 10, 1988, 102 Stat. 3403; Pub. L. 101–508, title XI, § 11801(a)(30), Nov. 5, 1990, 104 Stat. 1388–521; Pub. L. 103–66, title XIII, § 13203(c)(2), Aug. 10, 1993, 107 Stat. 462; Pub. L. 104–188, title I, § 1702(g)(2), Aug. 20, 1996, 110 Stat. 1873; Pub. L. 108–357, title IV, §§ 411(c), 418(a), Oct. 22, 2004, 118 Stat. 1504, 1512; Pub. L. 109–135, title IV, § 403(p)(1), Dec. 21, 2005, 119 Stat. 2626; Pub. L. 109–222, title V, §§ 504(a), 505(a), 506(a), May 17, 2006, 120 Stat. 355, 357; Pub. L. 110–343, div. C, title II, § 208(a), Oct. 3, 2008, 122 Stat. 3865; Pub. L. 111–312, title VII, § 749(a), Dec. 17, 2010, 124 Stat. 3320; Pub. L. 112–240, title III, § 321(a), Jan. 2, 2013, 126 Stat. 2332; Pub. L. 113–295, div. A, title I, § 133(a), Dec. 19, 2014, 128 Stat. 4018; Pub. L. 114–113, div. Q, title I, § 133(a), title III, §§ 322(a)(1), (2)(A), (b), 323(a), 325(a), Dec. 18, 2015, 129 Stat. 3055, 3098, 3101–3103; Pub. L. 115–97, title I, § 12001(b)(3)(D), Dec. 22, 2017, 131 Stat. 2093; Pub. L. 115–141, div. U, title I, § 101(p)(1)–(6), (q), title IV, § 401(a)(155), (156), Mar. 23, 2018, 132 Stat. 1166, 1167, 1191; Pub. L. 117–169, title I, § 10101(a)(4)(B)(iii), Aug. 16, 2022, 136 Stat. 1822.)

Editorial Notes

REFERENCES IN TEXT

Section 2 of the Investment Company Act of 1940, referred to in subsec. (h)(4)(E)(ii)(II), is classified to section 80a–2 of Title 15, Commerce and Trade.

Section 857(b)(3)(F), referred to in subsec. (k)(2)(C)(ii), was redesignated section 857(b)(3)(E) and a new subsec. (b)(3)(F) added by Pub. L. 115–97, title I, § 13001(b)(2)(K)(i), (iv), Dec. 22, 2017, 131 Stat. 2096, 2097.

AMENDMENTS

2022—Subsec. (a)(2)(A)(i). Pub. L. 117–169 substituted “55(b)(1)(D)” for “55(b)(2)”.

2018—Subsec. (a)(1)(A). Pub. L. 115–141, § 401(a)(155), substituted “section 871(b)(1)” for “section 871(B)(1)”.

Subsec. (h)(4)(A)(ii). Pub. L. 115–141, § 101(p)(6), repealed Pub. L. 114–113, § 322(b)(2), and provided that cl. (ii) shall be applied as if amendment had never been enacted. See 2015 Amendment note below.

Subsec. (k)(2). Pub. L. 115–141, § 401(a)(156), substituted “United States real property interest” for “USRPI” in heading.

Subsec. (k)(2)(B). Pub. L. 115–141, § 101(p)(1)(A), substituted “one” for “1” in introductory provisions.

Subsec. (k)(2)(B)(i). Pub. L. 115–141, § 101(p)(1)(A), added cl. (i) and struck out former cl. (i) which read as follows: “subparagraph (A)(i) shall not apply to so much of the stock of a real estate investment trust held by a qualified shareholder as bears the same ratio to the value of the interests (other than interests held solely as a creditor) held by such applicable investors in the qualified shareholder bears to value of all interests (other than interests held solely as a creditor) in the qualified shareholder, and”.

Subsec. (k)(2)(B)(ii). Pub. L. 115–141, § 101(p)(1)(A), substituted “the applicable percentage of the” for “a percentage equal to the ratio determined under clause (i) of the”.

Subsec. (k)(2)(D). Pub. L. 115–141, § 101(p)(2), substituted “subsection” for “paragraph” in introductory provisions.

Subsec. (k)(2)(E). Pub. L. 115–141, § 101(p)(3), substituted “and (D)” for “and (C) and paragraph (4)”.

Subsec. (k)(2)(F). Pub. L. 115–141, § 101(p)(1)(B), added subpar. (F).

Subsec. (k)(3)(B)(i). Pub. L. 115–141, § 101(p)(4), substituted “which—” for “which, under the comprehensive income tax treaty described in subparagraph (A)(i), is eligible”, added subcl. (I), and inserted “(II) is eligible under such treaty” before “for a reduced rate”.

Subsec. (k)(3)(B)(ii)(II). Pub. L. 115–141, § 101(p)(5)(A), inserted “and” at end.

Subsec. (k)(3)(B)(ii)(III). Pub. L. 115–141, § 101(p)(5)(B), substituted “domestic corporation” for “United States corporation”.

Subsec. (l). Pub. L. 115–141, § 101(q)(1), substituted “Exception for qualified foreign pension funds” for “Exception for interests held by foreign pension funds” in heading.

Subsec. (l)(1). Pub. L. 115–141, § 101(q)(1), amended par. (1) generally. Prior to amendment, text read as follows: “This section shall not apply to any United States real property interest held directly (or indirectly through 1 or more partnerships) by, or to any distribution received from a real estate investment trust by—

“(A) a qualified foreign pension fund, or

“(B) any entity all of the interests of which are held by a qualified foreign pension fund.”

Subsec. (l)(2)(B). Pub. L. 115–141, § 101(q)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “which is established to provide retirement or pension benefits to participants or beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered.”.

Subsec. (l)(2)(D). Pub. L. 115–141, § 101(q)(3), substituted “with respect to which annual information about its beneficiaries is provided, or is otherwise available, to the relevant tax authorities” for “provides annual information reporting about its beneficiaries to the relevant tax authorities”.

Subsec. (l)(2)(E)(i). Pub. L. 115–141, § 101(q)(4)(A), substituted “such entity or arrangement” for “such entity”.

Subsec. (l)(2)(E)(ii). Pub. L. 115–141, § 101(q)(4)(B), substituted “, or such income is excluded from the gross income of such entity or arrangement or is taxed at a reduced rate” for “or such income is taxed at a reduced rate”.

2017—Subsec. (a)(2)(A). Pub. L. 115–97 substituted “section 55(b)(1)” for “section 55(b)(1)(A)” in introductory provisions.

2015—Subsec. (c)(1)(A). Pub. L. 114–113, § 322(a)(2)(A), inserted “or subsection (k)” after “subparagraph (B)” in introductory provisions.

Subsec. (c)(1)(B)(iii). Pub. L. 114–113, § 325(a), added cl. (iii).

Subsec. (h)(4). Pub. L. 114–113, § 322(b)(1)(B), inserted “and special rules” after “Definitions” in heading.

Subsec. (h)(4)(A). Pub. L. 114–113, § 133(a), struck out cl. (i) designation and heading before “The term ‘qualified investment entity’ means—”, redesignated subcls. (I) and (II) of former cl. (i) as cls. (i) and (ii), respectively, and struck out former cl. (ii). Prior to amendment, text of cl. (ii) read as follows: “Clause (i)(II) shall not apply after December 31, 2014. Notwithstanding the preceding sentence, an entity described in clause (i)(II) shall be treated as a qualified investment entity for purposes of applying paragraphs (1) and (5) and section 1445 with respect to any distribution by the entity to a nonresident alien individual or a foreign corporation which is attributable directly or indirectly to a distribution to the entity from a real estate investment trust.”

Subsec. (h)(4)(A)(ii). Pub. L. 114–113, § 322(b)(2), which directed insertion of “and for purposes of determining whether a real estate investment trust is a domestically controlled qualified investment entity under this subsection” after “real estate investment trust”, was repealed by Pub. L. 115–141, § 101(p)(6), with cl. (ii) to be applied as if amendment had never been enacted.

Subsec. (h)(4)(E). Pub. L. 114–113, § 322(b)(1)(A), added subpar. (E).

Subsec. (k). Pub. L. 114-113, §322(a)(1), added subsec. (k).

Subsec. (l). Pub. L. 114-113, §323(a), added subsec. (l). 2014—Subsec. (h)(4)(A)(ii). Pub. L. 113-295 substituted “December 31, 2014” for “December 31, 2013”.

2013—Subsec. (h)(4)(A)(ii). Pub. L. 112-240 substituted “December 31, 2013” for “December 31, 2011”.

2010—Subsec. (h)(4)(A)(ii). Pub. L. 111-312 substituted “December 31, 2011” for “December 31, 2009”.

2008—Subsec. (h)(4)(A)(ii). Pub. L. 110-343 substituted “December 31, 2009” for “December 31, 2007”.

2006—Subsec. (h)(1). Pub. L. 109-222, §505(a)(1), in first sentence, substituted “a nonresident alien individual, a foreign corporation, or other qualified investment entity” for “a nonresident alien individual or a foreign corporation” and “such nonresident alien individual, foreign corporation, or other qualified investment entity” for “such nonresident alien individual or foreign corporation” and inserted second sentence and struck out former second sentence which read as follows: “Notwithstanding the preceding sentence, any distribution by a real estate investment trust with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of the distribution.”

Subsec. (h)(4)(A)(i)(II). Pub. L. 109-222, §504(a), inserted “which is a United States real property holding corporation or which would be a United States real property holding corporation if the exceptions provided in subsections (c)(3) and (h)(2) did not apply to interests in any real estate investment trust or regulated investment company” after “any regulated investment company”.

Subsec. (h)(4)(A)(ii). Pub. L. 109-222, §505(a)(2), inserted at end “Notwithstanding the preceding sentence, an entity described in clause (i)(II) shall be treated as a qualified investment entity for purposes of applying paragraphs (1) and (5) and section 1445 with respect to any distribution by the entity to a nonresident alien individual or a foreign corporation which is attributable directly or indirectly to a distribution to the entity from a real estate investment trust.”

Subsec. (h)(5). Pub. L. 109-222, §506(a), added par. (5).

2005—Subsec. (h)(1). Pub. L. 109-135 substituted “any distribution by a real estate investment trust with respect to any class of stock” for “any distribution by a REIT with respect to any class of stock” and “the 1-year period ending on the date of the distribution” for “the taxable year”.

2004—Subsec. (h). Pub. L. 108-357, §411(c)(5), substituted “certain investment entities” for “REITS” in heading.

Subsec. (h)(1). Pub. L. 108-357, §418(a), inserted at end “Notwithstanding the preceding sentence, any distribution by a REIT with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the taxable year.”

Pub. L. 108-357, §411(c)(1), substituted “qualified investment entity” for “REIT” in two places.

Subsec. (h)(2). Pub. L. 108-357, §411(c)(2), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “The term ‘United States real property interest’ does not include any interest in a domestically-controlled REIT.”

Subsec. (h)(3). Pub. L. 108-357, §411(c)(2), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: “In the case of a domestically-controlled REIT, rules similar to the rules of subsection (d) shall apply to the foreign ownership percentage of any gain.”

Subsec. (h)(4)(A). Pub. L. 108-357, §411(c)(3), amended heading and text of subpar. (A) generally. Prior to

amendment, text read as follows: “The term ‘REIT’ means a real estate investment trust.”

Subsec. (h)(4)(B). Pub. L. 108-357, §411(c)(3), amended heading and text of subpar. (B) generally. Prior to amendment, text read as follows: “The term ‘domestically-controlled REIT’ means a REIT in which at all times during the testing period less than 50 percent in value of the stock was held directly or indirectly by foreign persons.”

Subsec. (h)(4)(C), (D)(iii). Pub. L. 108-357, §411(c)(4), substituted “qualified investment entity” for “REIT”.

1996—Subsec. (f). Pub. L. 104-188 struck out subsec. (f) which read as follows:

“(f) DISTRIBUTIONS BY DOMESTIC CORPORATIONS TO FOREIGN SHAREHOLDERS.—If a domestic corporation distributes a United States real property interest to a nonresident alien individual or a foreign corporation in a distribution to which section 301 applies, notwithstanding any other provision of this chapter, the basis of such United States real property interest in the hands of such nonresident alien individual or foreign corporation shall not exceed—

“(1) the adjusted basis of such property before the distribution, increased by

“(2) the sum of—

“(A) any gain recognized by the distributing corporation on the distribution, and

“(B) any tax paid under this chapter by the distributee on such distribution.”

1993—Subsec. (a)(2). Pub. L. 103-66 substituted “Minimum” for “21-percent minimum” in heading and “the taxable excess for purposes of section 55(b)(1)(A) shall not be less than” for “the amount determined under section 55(b)(1)(A) shall not be less than 21 percent of” in subpar. (A).

1990—Subsec. (k). Pub. L. 101-508 struck out subsec. (k) which read as follows: “If—

“(1) a foreign corporation adopts, or has adopted, a plan of liquidation described in section 334(b)(2)(A), and

“(2) the 12-month period described in section 334(b)(2)(B) for the acquisition by purchase of the stock of the foreign corporation, began after December 31, 1979, and before November 26, 1980,

then such foreign corporation may make an election to be treated, for the period following June 18, 1980, as a domestic corporation pursuant to section 897(i)(1). Notwithstanding an election under the preceding sentence, any selling shareholder of such corporation shall be considered to have sold the stock of a foreign corporation.”

1988—Subsec. (l). Pub. L. 100-647 struck out subsec. (l) which provided special rule for certain United States shareholders of liquidating foreign corporations.

1986—Subsec. (a)(2). Pub. L. 99-514, §701(e)(4)(G), substituted “21-percent” for “20-percent” in heading and amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “In the case of any nonresident alien individual, the amount determined under section 55(a)(1) for the taxable year shall not be less than 20 percent of the lesser of—

“(i) the individual’s alternative minimum taxable income (as defined in section 55(b)) for the taxable year, or

“(ii) the individual’s net United States real property gain for the taxable year.”

Subsec. (d). Pub. L. 99-514, §631(e)(12), in heading, struck out “, etc.” after “distributions”, and in text, struck out heading and designation for par. (1), redesignated subpar. (A) as par. (1), redesignated subpar. (B) as par. (2) and substituted “paragraph (1)” for “subparagraph (A)” in introductory provisions, redesignated cl. (i) and its subcls. (I) and (II) as subpar. (A) and cls. (i) and (ii), respectively, redesignated cl. (ii) as subpar. (B), and struck out former par. (2) which provided that section 337 not apply to any sale or exchange of a United States real property interest by a foreign corporation.

Subsec. (i)(1), (4). Pub. L. 99-514, §1810(f)(1), inserted reference to section 1445.

1982—Subsec. (a)(2)(A). Pub. L. 97-248 substituted “section 55(a)(1) for the taxable year shall not be less than 20 percent of the lesser of—” for “section 55(a)(1)(A) for the taxable year shall not be less than 20 percent of whichever of the following is the least:” in introductory provisions, in cl. (i) struck out “(1)” after “section 55(b)” and inserted “or” at the end, in cl. (ii) substituted a period for a comma and struck out “or” at the end, and struck out former cl. (iii), which had provided for the amount of \$60,000 as a third alternative.

1981—Subsec. (c)(1)(A)(i). Pub. L. 97-34, § 831(a)(1), defined “United States real property interest” to also mean an interest in real property located in the Virgin Islands.

Subsec. (c)(4)(B). Pub. L. 97-34, § 831(b), substituted “Assets” for “Interests” in heading and in first sentence “Under regulations prescribed by the Secretary, assets held by a partnership, trust or estate shall be treated as held” for “United States real property interests held by a partnership, trust, or estate shall be treated as owned” before “proportionately by its partners or beneficiaries”, and inserted provisions respecting treatment of an asset as used or held for use in a trade or business by a partner or beneficiary when used or held by the partnership, trust, or estate in a trade or business and attributing chain treatment of such trade or business to partnership, trust, or estate which are above the first such entity.

Subsec. (d)(1)(B). Pub. L. 97-34, § 831(c), substituted “Exceptions” for “Exception where there is a carryover basis” in heading, inserted introductory text “Gain shall not be recognized under subparagraph (A)”, inserted cls. (i)(I) and (ii), and substituted cl. (i)(II) the basis of the distributed property in the hands of the distributee is no greater than the adjusted basis of such property before the distribution, increased by the amount of gain (if any) recognized by the distributing corporation” for subpar. (B) provision “Subparagraph (A) shall not apply if the basis of the distributed property in the hands of the distributee is the same as the adjusted basis of such property before the distribution increased by the amount of any gain recognized by the distributing corporation.”

Subsec. (i). Pub. L. 97-34, § 831(d), in par. (1)(A) substituted “holds a United States real property interest” for “has a permanent establishment in the United States”, in par. (1)(B) substituted “treaty obligation of the United States the foreign corporation is entitled to nondiscriminatory treatment with respect to that interest” for “treaty, such permanent establishment may not be treated less favorably than domestic corporations carrying on the same activities”, in par. (3) inserted subpar. (A), designated existing provisions as subpar. (B), in subpar. (B) substituted “such other conditions as the Secretary may prescribe by regulations with respect to the corporation or its shareholders” for “such conditions as may be prescribed by the Secretary”, and prescribed percentage interest required for making the requisite election and application of constructive ownership rules in determining existence of the required percentage of a class of interest.

Subsecs. (j) to (l). Pub. L. 97-34, § 831(f), (g), added subsecs. (j) to (l).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by Pub. L. 117-169 applicable to taxable years beginning after Dec. 31, 2022, see section 10101(f) of Pub. L. 117-169, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by section 101(p)(1)–(6), (q) of Pub. L. 115-141 effective as if included in the provision of the Protecting Americans from Tax Hikes Act of 2015, div. Q of Pub. L. 114-113, to which such amendment relates, see section 101(s) of Pub. L. 115-141, set out as a note under section 24 of this title.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to taxable years beginning after Dec. 31, 2017, see section 12001(c) of Pub. L. 115-97, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title I, § 133(b), Dec. 18, 2015, 129 Stat. 3055, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section] shall take effect on January 1, 2015. Notwithstanding the preceding sentence, such amendments shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before the date of the enactment of this Act [Dec. 18, 2015].

“(2) AMOUNTS WITHHELD ON OR BEFORE DATE OF ENACTMENT.—In the case of a regulated investment company—

“(A) which makes a distribution after December 31, 2014, and before the date of the enactment of this Act, and

“(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code,

such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury.”

Amendment by section 322(a)(1), (2)(A) of Pub. L. 114-113 effective Dec. 18, 2015, and applicable to any disposition on and after Dec. 18, 2015, and any distribution by a real estate investment trust on or after such date which is treated as a deduction for a taxable year of such trust ending after such date, see section 322(c)(1) of Pub. L. 114-113, set out as a note under section 857 of this title.

Pub. L. 114-113, div. Q, title III, § 322(c)(2), (3), Dec. 18, 2015, 129 Stat. 3102; as amended by Pub. L. 115-141, div. U, title I, § 101(p)(6), (7), Mar. 23, 2018, 132 Stat. 1167, provided that:

“(2) DETERMINATION OF DOMESTIC CONTROL.—The amendments made by subsection (b)(1) [amending this section] shall apply with respect to testing periods (as defined in section 897(h)(4)(D) of the Internal Revenue Code of 1986) ending on or after the date of the enactment of this Act [Dec. 18, 2015].”

[(3) Repealed. Pub. L. 115-141, div. U, title I, § 101(p)(6), Mar. 23, 2018, 132 Stat. 1167.]

Pub. L. 114-113, div. Q, title III, § 323(c), Dec. 18, 2015, 129 Stat. 3103, provided that: “The amendments made by this section [amending this section and section 1445 of this title] shall apply to dispositions and distributions after the date of the enactment of this Act [Dec. 18, 2015].”

Pub. L. 114-113, div. Q, title III, § 325(b), Dec. 18, 2015, 129 Stat. 3103, provided that: “The amendment made by this section [amending this section] shall apply to dispositions on or after the date of the enactment of this Act [Dec. 18, 2015].”

EFFECTIVE DATE OF 2014 AMENDMENT

Pub. L. 113-295, div. A, title I, § 133(b), Dec. 19, 2014, 128 Stat. 4018, provided that:

“(1) IN GENERAL.—The amendment made by this section [amending this section] shall take effect on January 1, 2014. Notwithstanding the preceding sentence, such amendment shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before the date of the enactment of this Act [Dec. 19, 2014].

“(2) AMOUNTS WITHHELD ON OR BEFORE DATE OF ENACTMENT.—In the case of a regulated investment company—

“(A) which makes a distribution after December 31, 2013, and before the date of the enactment of this Act, and

“(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code, such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury.”

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112-240, title III, §321(b), Jan. 2, 2013, 126 Stat. 2332, provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2012. Notwithstanding the preceding sentence, such amendment shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before the date of the enactment of this Act [Jan. 2, 2013].

“(2) AMOUNTS WITHHELD ON OR BEFORE DATE OF ENACTMENT.—In the case of a regulated investment company—

“(A) which makes a distribution after December 31, 2011, and before the date of the enactment of this Act; and

“(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code, such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury.”

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title VII, §749(b), Dec. 17, 2010, 124 Stat. 3320, provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2010. Notwithstanding the preceding sentence, such amendment shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before the date of the enactment of this Act [Dec. 17, 2010].

“(2) AMOUNTS WITHHELD ON OR BEFORE DATE OF ENACTMENT.—In the case of a regulated investment company—

“(A) which makes a distribution after December 31, 2009, and before the date of the enactment of this Act [Dec. 17, 2010]; and

“(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with respect to such distribution under section 1445 of such Code, such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury.”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. C, title II, §208(b), Oct. 3, 2008, 122 Stat. 3865, as amended by Pub. L. 113-295, div. A, title II, §211(a), Dec. 19, 2014, 128 Stat. 4032, provided that:

“(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall take effect on January 1, 2008. Notwithstanding the preceding sentence, such amendment shall not apply with respect to the withholding requirement under section 1445 of the Internal Revenue Code of 1986 for any payment made before October 4, 2008.

“(2) AMOUNTS WITHHELD ON OR BEFORE DATE OF ENACTMENT.—In the case of a regulated investment company—

“(A) which makes a distribution after December 31, 2007, and before October 4, 2008, and

“(B) which would (but for the second sentence of paragraph (1)) have been required to withhold with

respect to such distribution under section 1445 of such Code, such investment company shall not be liable to any person to whom such distribution was made for any amount so withheld and paid over to the Secretary of the Treasury.”

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-222, title V, §504(b), May 17, 2006, 120 Stat. 355, provided that: “The amendment made by this section [amending this section] shall take effect as if included in the provisions of section 411 of the American Jobs Creation Act of 2004 [Pub. L. 108-357] to which it relates.”

Amendment by section 505(a) of Pub. L. 109-222 applicable to taxable years of qualified investment entities beginning after Dec. 31, 2005, except that no amount shall be required to be withheld under section 1441, 1442, or 1445 of the Internal Revenue Code of 1986 with respect to any distribution before May 17, 2006 if such amount was not otherwise required to be withheld under any such section as in effect before such amendments, see section 505(d) of Pub. L. 109-222, set out as a note under section 852 of this title.

Pub. L. 109-222, title V, §506(c), May 17, 2006, 120 Stat. 358, provided that: “The amendments made by this section [amending this section and section 1445 of this title] shall apply to taxable years beginning after December 31, 2005, except that such amendments shall not apply to any distribution, or substitute dividend payment, occurring before the date that is 30 days after the date of the enactment of this Act [May 17, 2006].”

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 411(c)(1) of Pub. L. 108-357 applicable to dividends with respect to taxable years of regulated investment companies beginning after Dec. 31, 2004, and amendment by section 411(c)(2)–(5) of Pub. L. 108-357 effective after Dec. 31, 2004, see section 411(d)(1), (3) of Pub. L. 108-357, set out as a note under section 871 of this title.

Amendment by section 418(a) of Pub. L. 108-357 applicable to any distribution by a real estate investment trust which is either treated as a deduction for a taxable year of such trust beginning after Oct. 22, 2004, or made after Oct. 22, 2004, and treated as a deduction under section 860 of this title for a taxable year of such trust beginning on or before Oct. 22, 2004, see section 418(c) of Pub. L. 108-357, as amended, set out as a note under section 857 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to taxable years beginning after Dec. 31, 1992, see section 13203(d) of Pub. L. 103-66, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 631(e)(12) of Pub. L. 99-514 applicable to any distribution in complete liquidation, and any sale or exchange, made by a corporation after July 31, 1986, unless such corporation is completely liquidated before Jan. 1, 1987, any transaction described in section 338 of this title for which the acquisition date occurs after Dec. 31, 1986, and any distribution, not in complete liquidation, made after Dec. 31, 1986, with exceptions and special and transitional rules, see section 633 of Pub. L. 99-514, set out as an Effective Date note under section 336 of this title.

Amendment by section 701(e)(4)(G) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 701(f) of Pub. L. 99-514, set out as an Effective Date note under section 55 of this title.

Amendment by section 1810(f)(1) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to taxable years beginning after Dec. 31, 1982, see section 201(e)(1) of Pub. L. 97-248, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-34, title VIII, §831(i), Aug. 13, 1981, 95 Stat. 355, provided that: "The amendments made by this section [amending this section and sections 862 and 6039C of this title and provisions set out as a note below] shall apply to dispositions after June 18, 1980, in taxable years ending after such date."

EFFECTIVE DATE

Pub. L. 96-499, title XI, §1125(a), (b), Dec. 5, 1980, 94 Stat. 2690, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle C (§§1121-1125) of title XI of Pub. L. 96-499, enacting this section and provisions set out as notes under this section, and amending sections 861, 871, 882 of this title] shall apply to dispositions after June 18, 1980.

"(b) REPORTING.—The amendments made by section 1123 [enacting section 6039C of this title and amending section 6652 of this title] shall apply to 1980 and subsequent calendar years. In applying such amendments to 1980, such calendar year shall be treated as beginning on June 19, 1980, and ending on December 31, 1980."

REPEAL

Pub. L. 115-141, div. U, title I, §101(p)(6), Mar. 23, 2018, 132 Stat. 1167, provided that: "Section 322 of the Protecting Americans from Tax Hikes Act of 2015 [div. Q of Pub. L. 114-113] is amended by striking subsections (b)(2) [amending this section] and (c)(3) [formerly set out in a note under this section], and the Internal Revenue Code of 1986 shall be applied as if such subsections, and amendments made thereby, had never been enacted."

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

APPLICABILITY OF CERTAIN AMENDMENTS BY PUB. L. 99-514 IN RELATION TO TREATY OBLIGATIONS OF UNITED STATES

For applicability of amendment by section 701(e)(4)(G) of Pub. L. 99-514 notwithstanding any trea-

ty obligation of the United States in effect on Oct. 22, 1986, with provision that for such purposes any amendment by title I of Pub. L. 100-647 be treated as if it had been included in the provision of Pub. L. 99-514 to which such amendment relates, see section 1012(aa)(2), (4) of Pub. L. 100-647, set out as a note under section 861 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

SPECIAL RULE FOR APPLYING SECTION 897

Pub. L. 99-514, title XII, §1228, Oct. 22, 1986, 100 Stat. 2560, as amended by Pub. L. 100-647, title I, §1012(m), Nov. 10, 1988, 102 Stat. 3513, provided that:

"(a) IN GENERAL.—For purposes of section 897 of the Internal Revenue Code of 1986, gain shall not be recognized on the transfer, sale, exchange, or other disposition, of shares of stock of a United States real property holding company, if—

"(1) such United States real property holding company is a Delaware corporation incorporated on January 17, 1984,

"(2) the transfer, sale, exchange, or other disposition is to any member of a qualified ownership group,

"(3) the recipient of the share of stock elects, for purposes of such section 897, a carryover basis in the transferred shares,

"(4) the transfer, sale, exchange, or other disposition is part of a single integrated plan, whereby the stock of the corporation described in paragraph (1) becomes owned directly by the 2 corporations specifically referred to in subsection (b) or by such 2 corporations and by 1 or both of their jointly owned direct subsidiaries,

"(5) within 20 days after each transfer, sale, exchange, or other disposition, the person making such transfer, sale, exchange, or other disposition notifies the Internal Revenue Service of the transaction, the date of the transaction, the basis of the stock involved, the holding period for such stock, and such other information as the Internal Revenue Service may require, and

"(6) the integrated plan is completed before the date 4 years after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988 [Nov. 10, 1988].

In the case of any underpayment attributable to a failure to meet any requirement of this subsection, the period during which such underpayment may be assessed shall in no event expire before the date 5 years after the date of the enactment of the Technical and Miscellaneous Revenue Act of 1988.

"(b) MEMBER OF A QUALIFIED OWNERSHIP GROUP.—For purposes of this section, the term 'member of a qualified ownership group' means a corporation incorporated on June 16, 1890, under the laws of the Netherlands or a corporation incorporated on October 18, 1897, under the laws of the United Kingdom or any corporation owned directly or indirectly by either or both such corporations.

"(c) [Repealed. Pub. L. 100-647, title I, §1012(m)(2), Nov. 10, 1988, 102 Stat. 3513.]

"(d) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of the enactment of this section [Oct. 22, 1986]."

GAIN FROM DISPOSITION OF INVESTMENT IN UNITED STATES REAL PROPERTY BY NONRESIDENT ALIEN INDIVIDUALS AND FOREIGN CORPORATIONS

Pub. L. 96-499, title XI, §1125(c), Dec. 5, 1980, 94 Stat. 2690, as amended by Pub. L. 97-34, title VIII, §831(h),

Aug. 13, 1981, 95 Stat. 355; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), after December 31, 1984, nothing in section 894(a) or 7852(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] or in any other provision of law shall be treated as requiring, by reason of any treaty obligation of the United States, an exemption from (or reduction of) any tax imposed by section 871 or 882 of such Code on a gain described in section 897 of such Code.

“(2) SPECIAL RULE FOR TREATIES RENEGOTIATED BEFORE 1985.—If—

“(A) any treaty (hereinafter in this paragraph referred to as the ‘old treaty’) is renegotiated to resolve conflicts between such treaty and the provisions of section 897 of the Internal Revenue Code of 1986, and

“(B) the new treaty is signed on or after January 1, 1981, and before January 1, 1985,

then paragraph (1) shall be applied with respect to obligations under the old treaty by substituting for ‘December 31, 1984’ the date (not later than 2 years after the new treaty was signed) specified in the new treaty (or accompanying exchange of notes).”

ADJUSTMENT IN BASIS FOR CERTAIN TRANSACTIONS
BETWEEN RELATED PERSONS

Pub. L. 96-499, title XI, §1125(d), Dec. 5, 1980, 94 Stat. 2691, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—In the case of any disposition after December 31, 1979, of a United States real property interest (as defined in section 897(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) to a related person (within the meaning of section 453(f)(1) of such Code), the basis of the interest in the hands of the person acquiring it shall be reduced by the amount of any nontaxed gain.

“(2) NONTAXED GAIN.—For purposes of paragraph (1), the term ‘nontaxed gain’ means any gain which is not subject to tax under section 871(b)(1) or 882(a)(1) of such Code—

“(A) because the disposition occurred before June 19, 1980, or

“(B) because of any treaty obligation of the United States.”

§ 898. Taxable year of certain foreign corporations

(a) General rule

For purposes of this title, the taxable year of any specified foreign corporation shall be the required year determined under subsection (c).

(b) Specified foreign corporation

For purposes of this section—

(1) In general

The term “specified foreign corporation” means any foreign corporation—

(A) which is treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, and

(B) with respect to which the ownership requirements of paragraph (2) are met.

(2) Ownership requirements

(A) In general

The ownership requirements of this paragraph are met with respect to any foreign corporation if a United States shareholder owns, on each testing day, more than 50 percent of—

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

(ii) the total value of all classes of stock of such corporation.

(B) Ownership

For purposes of subparagraph (A), the rules of subsections (a) and (b) of section 958 shall apply in determining ownership.

(3) United States shareholder

The term “United States shareholder” has the meaning given to such term by section 951(b), except that, in the case of a foreign corporation having related person insurance income (as defined in section 953(c)(2)), the Secretary may treat any person as a United States shareholder for purposes of this section if such person is treated as a United States shareholder under section 953(c)(1).

(c) Determination of required year

(1) In general

The required year is—

(A) the majority U.S. shareholder year, or

(B) if there is no majority U.S. shareholder year, the taxable year prescribed under regulations.

(2) 1-month deferral allowed

A specified foreign corporation may elect, in lieu of the taxable year under paragraph (1)(A), a taxable year beginning 1 month earlier than the majority U.S. shareholder year.

(3) Majority U.S. shareholder year

(A) In general

For purposes of this subsection, the term “majority U.S. shareholder year” means the taxable year (if any) which, on each testing day, constituted the taxable year of—

(i) each United States shareholder described in subsection (b)(2)(A), and

(ii) each United States shareholder not described in clause (i) whose stock was treated as owned under subsection (b)(2)(B) by any shareholder described in such clause.

(B) Testing day

The testing days shall be—

(i) the first day of the corporation’s taxable year (determined without regard to this section), or

(ii) the days during such representative period as the Secretary may prescribe.

(Added Pub. L. 101-239, title VII, §7401(a), Dec. 19, 1989, 103 Stat. 2355; amended Pub. L. 108-357, title IV, §413(c)(13), Oct. 22, 2004, 118 Stat. 1507.)

Editorial Notes

AMENDMENTS

2004—Subsec. (b)(1)(A). Pub. L. 108-357, §413(c)(13)(A), amended subpar. (A) generally. Prior to amendment, subpar (A) read as follows:

“(A) which is—

“(i) treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, or

“(ii) a foreign personal holding company (as defined in section 552), and”.

Subsec. (b)(2)(B). Pub. L. 108-357, §413(c)(13)(B), struck out “and sections 551(f) and 554, whichever are applicable,” after “section 958”.

Subsec. (b)(3). Pub. L. 108-357, §413(c)(13)(C), reenacted heading without change, struck out “(A) In general” before “The term”, and struck out heading and text of