

Treasury Regulations Under Code Section 952 Subpart F Income Defined

Reg. § 1.952-1 (2002) Subpart F Income Defined

(a) *In general.* For purposes of sections 951 through 964, a controlled foreign corporation's Subpart F income for any taxable year shall, except as provided in paragraph (b) of this section and subject to the limitations of paragraphs (c) and (d) of this section, consist of the sum of—

(1) The income derived by such corporation for such year from the insurance of United States risks (determined in accordance with the provisions of section 953 and sections 1.953-1 through 1.953-6),

(2) The income derived by such corporation for such year which constitutes foreign base company income (determined in accordance with the provisions of section 954 and sections 1.954-1 through 1.954-8),

(3)(i) An amount equal to the product of—

(A) The income of such corporation other than income which—

(1) Is attributable to earnings and profits of the foreign corporation included in the gross income of a United States person under section 951 (other than by reason of this paragraph) (determined in accordance with the provisions of section 951 and section 1.951-1), or

(2) Is described in section 952(b),

multiplied by

(B) The international boycott factor determined in accordance with the provisions of section 999(c)(1), or

(ii) In lieu of the amount determined under paragraph (a)(3)(i) of this section, the amount described under section 999(c)(2) of such international boycott income, and

(4) The sum of the amount of any illegal bribes, kickbacks, or other payments paid after November 3, 1976, by or on behalf of the corporation during the taxable year of the corporation directly or indirectly to an official, employee, or agent in fact of a government. An amount is paid by a controlled foreign corporation where it is paid by an officer, director, employee, shareholder or agent of such corporation for the benefit of such corporation. For purposes of this section, the principles of section 162(c) and the regulations thereunder shall apply. In the case of payments made after September 3, 1982, a payment is illegal if the payment would be unlawful under the Foreign Corrupt Practices Act of 1977 if the payor were a United States person. The fair market value of an illegal payment made in the form of property or services shall be considered the amount of such illegal payment.

Pursuant to section 951(a)(1)(A)(i) and section 1.951-1, a United States shareholder of such controlled foreign corporation must include his pro rata share of such Subpart F income in his gross income for his taxable year in which or with which such taxable year of the foreign corporation ends. See section 952(a). However, see paragraph (a) of section 1.957-2 for special rule limiting the Subpart F income to the income derived from the insurance of United States risks in the case of certain controlled foreign corporations described in section 957(b).

(b) *Exclusion of U.S. income.*

(1) *Taxable years beginning before January 1, 1967.* For rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.952-1(b)(1) (Revised of April 1, 1975).

(2) *Taxable years beginning after December 31, 1966.* Notwithstanding paragraph (a) of this section, a controlled foreign corporation's Subpart F income for any taxable year beginning after December 31, 1966, shall not include any item of income from sources within the United States which is effectively connected for that year with the conduct by such corporation of a trade or business in the United States unless, pursuant to a treaty to which the United States is a party, such item of income either is exempt from the income tax imposed by Chapter 1 (relating to normal taxes and surtaxes) of the Code or is subject to such tax at a reduced rate.

Thus, for example, dividends received from sources within the United States by a foreign corporation engaged in business in the United States during the taxable year, which are not effectively connected for that year with the conduct of a trade or business in the United States by that corporation, shall not be excluded from Subpart F income under section 952(b) and this subparagraph even though such dividends are subject to the tax of 30 percent imposed by section 881 (a). Also, for example, if, by reason of an income tax convention to which the United States is a party, an amount of interest from sources within the United States which is effectively connected for the taxable year with the conduct of a business in the United States by a foreign corporation is subject to tax under Chapter 1 at a flat rate of 15 percent, as provided in section 1.871-12, such interest is not excluded from Subpart F income under section 952(b) and this subparagraph. The deductions attributable to items of income which are excluded from Subpart F income under this subparagraph shall not be taken into account for purposes of section 952.

(3) *Rule applicable under section 956 (b)(2).* For purposes only of paragraph (b)(1)(viii) of section 1.956-2, an item of income derived by a controlled foreign corporation from sources within the United States with respect to which for the taxable year a tax is imposed in accordance with section 882(a) shall be considered described in section 952(b) whether or not such item of income would have constituted Subpart F income for such year.

(c) *Limitation on a controlled foreign corporation's Subpart F income.*

(1) *In general.* A United States shareholder's pro rata share (determined in accordance with the rules of paragraph (e) of section 1.951-1) of a controlled foreign corporation's Subpart F income for any taxable year shall not exceed his pro rata share of the earnings and profits (as defined in section 964(a) and section 1.964-1) of such corporation for such taxable year, computed as of the close of such taxable year without diminution by reason of any distributions made during such taxable year, minus the sum of—

(i) The amount, if any, by which such shareholder's pro rata share of—

(A) The sum of such corporation's deficits in earnings and profits for prior taxable years beginning after December 31, 1962, plus

(B) The sum of such corporation's deficits in earnings and profits for taxable years beginning after December 31, 1959, and before January 1, 1963 (reduced by the sum of the earnings and profits (as so defined) of such corporation for any of such taxable years) exceeds

(C) The sum of such corporation's earnings and profits for prior taxable years beginning after December 31, 1962, which, with respect to such shareholder, are allocated to other earnings and profits under section 959(c)(3) and section 1.959-3; and

(ii) Such shareholder's pro rata share of any deficits in earnings and profits of other foreign corporations for a taxable year beginning after December 31, 1962, which are attributable to stock of such other foreign corporations owned by such shareholder within the meaning of section 958(a) and which, in accordance with section 952(d) and paragraph (d) of this section, are taken into account as a reduction in the controlled foreign corporation's earnings and profits for such taxable year.

For purposes of applying this subparagraph, the reduction (if any) provided by subdivision (i) of this subparagraph in a United States shareholder's pro rata share of the earnings and profits of a controlled foreign corporation shall be taken into account before the reduction provided by subdivision (ii) of this subparagraph. See section 952(c).

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[*T.D. 6795, 30 FR 938, Jan. 29, 1965, as amended by T.D. 6892, 31 FR 11144, Aug. 23, 1966; T.D. 7293, 38 FR 32802, Nov. 28, 1973; T.D. 7545, 43 FR 19652, May 8, 1978; T.D. 7862, 47 FR 56490, Dec. 17, 1982; T.D. 7893, 48 FR 22508, May 19, 1983; T.D. 7894, 48 FR 22516, May 19, 1983; T.D. 8331, 56 FR 2846, Jan. 25, 1991; T.D. 8704, 62 FR 17-22, Jan. 2, 1997; T.D. 9008, 67 FR 48020-48025, July 23, 2002.*]