

Internal Revenue Service, Treasury

§ 1.404(a)-12

contribution which is deductible under section 404(a)(3)(B) by each contributing corporation shall be limited to that portion of its total current and accumulated earnings or profits (adjusted for its contribution deductible without regard to section 404(a)(3)(B)) which the prevented contribution bears to the total current and accumulated earnings or profits of all the participating members of the group having such earnings or profits (adjusted for all contributions deductible without regard to section 404(a)(3)(B)). For the

purpose of this section, current earnings or profits shall be computed as of the close of the taxable year without diminution by reason of any dividends during the taxable year, and accumulated earnings or profits shall be computed as of the beginning of the taxable year.

(d) The application of section 404(a)(3)(B) may be illustrated by the following example in which the affiliated group does not file a consolidated return:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
A	(\$10,000)	(\$140,000)	(\$150,000)	\$200,000	1/5	\$6,000	.....	.....	.....	.....
B	(5,000)	105,000	100,000	300,000	3/10	9,000	\$9,000	\$91,000	6/326×	\$1,674.85
C	75,000	175,000	250,000	500,000	1/2	15,000	15,000	235,000	6/326×	4,325.15
									235,000	
Total	60,000	140,000	200,000	1,000,000	.....	30,000	24,000	326,000	.....	6,000.00

- Column:
- (1) Member.
 - (2) Earnings and profits of the taxable year.
 - (3) Accumulated earnings and profits at beginning of taxable year.
 - (4) Total current and accumulated earnings and profits (column 2 plus column 3).
 - (5) Compensation of participating employees.
 - (6) Contribution formula: 50 percent of consolidated earnings and profits, allocated among participating member in proportion of covered payroll of each to covered payroll of consolidated group.
 - (7) Individual contribution had it not been prevented.
 - (8) Individual contribution made by each employer for its own employees.
 - (9) Balance of accumulated earnings and profits (column 4 minus column 8).
 - (10) Proportion of make-up contribution.
 - (11) Make-up contribution.

[T.D. 6500, 25 FR 11688, Nov. 26, 1960]

§ 1.404(a)-11 Trusts created or organized outside the United States; application of section 404(a)(4).

In order that a trust may constitute a qualified trust under section 401(a) and be exempt under section 501(a), it must be created or organized in the United States and maintained at all times as a domestic trust. See paragraph (a) of § 1.401-1. Paragraph (4) of section 404(a) provides, however, that an employer which is a resident, a corporation, or other entity of the United States, making contributions to a foreign stock bonus, pension, or profit-sharing trust, shall be allowed deductions for such contributions, under the applicable conditions and within the prescribed limits of section 404(a), if such foreign trust would qualify for exemption under section 501(a) except for the fact that it is a trust created, organized, or maintained outside the United States. Moreover, if a non-

resident alien individual, foreign corporation, or other entity is engaged in trade or business within the United States and makes contributions to a foreign stock bonus, pension, or profit-sharing trust, which would qualify under section 401(a) and be exempt under section 501(a) except that it is created, organized, or maintained outside the United States, such contributions are deductible subject to the conditions and limitations of section 404(a) and to the extent allowed by section 873 or 882(c).

[T.D. 6500, 25 FR 11689, Nov. 26, 1960]

§ 1.404(a)-12 Contributions of an employer under a plan that does not meet the requirements of section 401(a); application of section 404(a)(5).

(a) *In general.* Section 404(a)(5) covers all cases for which deductions are allowable under section 404(a) (for contributions paid by an employer under a stock bonus, pension, profit sharing, or