

**Internal Revenue Service, Treasury**

**§ 1.902-0**

\$37,440 does not exceed the limitation of \$37,440.

*Example 8.* (a) The facts are the same as in example 7, except that P is assumed to have received dividends for 1971 of \$25,000 from R, a foreign corporation incorporated in country X which is not a less developed country corporation within the meaning of section 902(d). Income tax of \$2,500 (\$25,000×10%) on such dividends is withheld at the source in country X. It is assumed that P is deemed under section 902(a)(1) and §1.902-1(h) to have paid income tax of \$22,500 to country X in respect of such dividends and that under paragraphs (a)(2)(i) and (b)(2)(i) of this section such dividends are deemed to be attributable to foreign mineral income from sources in country X and that such tax is deemed to be paid with respect to such foreign mineral income. Based upon the facts assumed, the U.S. tax on the foreign mineral income from sources in country X is \$60,240 before allowance of the foreign tax credit, determined as follows:

|  |           |          |           |
|--|-----------|----------|-----------|
| Foreign mineral income from country X:   |           |          |           |
| Income from mining property .....  | \$100,000 |          |           |
| Dividends from R .....   | 25,000    |          |           |
| Sec. 78 dividend .....   | 22,500    |          | \$147,500 |
| Less:  |           |          |           |
| Percentage depletion (14% of \$100,000, but not to exceed 50% of \$92,000) ..... |           | \$14,000 |           |
| Other deductions .....   |           | 8,000    |           |
| Taxable income .....   |           | 125,500  |           |
| Income tax rate .....  |           | 48%      |           |
| U.S. tax .....   |           | 60,240   |           |

(b) Without taking this section into account, P would be allowed a foreign tax credit for 1971 of \$60,240 (\$60,240×\$125,500/\$125,500), and foreign income tax in the amount of \$3,910 ((\$39,150+\$22,500+\$2,500) less \$60,240) would first be carried back to 1969 under section 904(d).

(c) Pursuant to paragraph (a)(1) of this section, however, the foreign income tax allowable as a credit against the U.S. tax is reduced from \$64,150 to \$60,240, determined as follows:

|  |  |  |  |          |
|--|--|--|--|----------|
| Foreign income tax paid, and deemed to be paid, to country X on foreign mineral income (\$39,150+\$22,500+\$2,500) .....   |  |  |  | \$64,150 |
| Less reduction under sec. 901(e):  |  |  |  |          |
| Smaller of \$64,150 (tax paid and deemed paid to country X on foreign mineral income) or \$64,560 (U.S. tax on foreign mineral income of \$134,500 (\$134,500×48%), determined by deducting cost depletion of \$5,000 in lieu of percentage depletion of \$14,000) ..... |  |  |  | \$64,150 |
| Less: U.S. tax on foreign mineral income (before credit) .....   |  |  |  | \$60,240 |
| Foreign income tax allowable as a credit .....   |  |  |  | \$3,910  |
| Foreign income tax allowable as a credit .....   |  |  |  | 60,240   |

(d) After taking this section into account, P is allowed a foreign tax credit for 1971 of \$60,240 (\$60,240×\$125,500/\$125,500), but no for-

ign income tax is carried back to 1969 under section 904(d) since the allowable credit of \$60,240 does not exceed the limitation of \$60,240.

[T.D. 7294, 38 FR 33074, Nov. 30, 1973, as amended by T.D. 7481, 42 FR 20130, Apr. 18, 1977]

**§ 1.902-0 Outline of regulations provisions for section 902.**

This section lists the provisions under section 902.

*§ 1.902-1 Credit for domestic corporate shareholder of a foreign corporation for foreign income taxes paid by the foreign corporation.*

- (a) Definitions and special effective date.
  - (1) Domestic shareholder.
  - (2) First-tier corporation.
  - (3) Second-tier corporation.
  - (4) Third-tier corporation.
  - (5) Example.
  - (6) Upper- and lower-tier corporations.
  - (7) Foreign income taxes.
  - (8) Post-1986 foreign income taxes.
  - (i) In general.
  - (ii) Distributions out of earnings and profits accumulated by a lower-tier corporation in its taxable years beginning before January 1, 1987, and included in the gross income of an upper-tier corporation in its taxable year beginning after December 31, 1986.
  - (iii) Foreign income taxes paid or accrued with respect to high withholding tax interest.
  - (9) Post-1986 undistributed earnings.
  - (i) In general.
  - (ii) Distributions out of earnings and profits accumulated by a lower-tier corporation in its taxable years beginning before January 1, 1987, and included in the gross income of an upper-tier corporation in its taxable year beginning after December 31, 1986.
  - (iii) Reduction for foreign income taxes paid or accrued.
  - (iv) Special allocations.
  - (10) Pre-1987 accumulated profits.
    - (i) Definition.
    - (ii) Computation of pre-1987 accumulated profits.
    - (iii) Foreign income taxes attributable to pre-1987 accumulated profits.
    - (11) Dividend.
    - (12) Dividend received.
    - (13) Special effective date.
      - (i) Rule.
      - (ii) Example.
  - (b) Computation of foreign income taxes deemed paid by a domestic shareholder, first-tier corporation, and second-tier corporation.
    - (1) General rule.

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- (2) Allocation rule for dividends attributable to post-1986 undistributed earnings and pre-1987 accumulated profits.
- (i) Portion of dividend out of post-1986 undistributed earnings.
- (ii) Portion of dividend out of pre-1987 accumulated profits.
- (3) Dividends paid out of pre-1987 accumulated profits.
- (4) Deficits in accumulated earnings and profits.
- (5) Examples.
- (c) Special rules.
  - (1) Separate computations required for dividends from each first-tier and lower-tier corporation.
    - (i) Rule.
    - (ii) Example.
  - (2) Section 78 gross-up.
    - (i) Foreign income taxes deemed paid by a domestic shareholder.
    - (ii) Foreign income taxes deemed paid by an upper-tier corporation.
    - (iii) Example.
  - (3) Creditable foreign income taxes.
  - (4) Foreign mineral income.
  - (5) Foreign taxes paid or accrued in connection with the purchase or sale of certain oil and gas.
  - (6) Foreign oil and gas extraction income.
  - (7) United States shareholders of controlled foreign corporations.
  - (8) Credit for foreign taxes deemed paid in a section 304 transaction.
  - (9) Effect of section 482 adjustments on post-1986 foreign income taxes and post-1986 undistributed earnings.
- (d) Dividends from controlled foreign corporations.
  - (1) General rule.
  - (2) Look-through.
    - (i) Dividends.
    - (ii) Coordination with section 960.
    - (3) Dividends distributed out of earnings accumulated before a controlled foreign corporation became a controlled foreign corporation.
      - (i) General rule.
      - (ii) Dividend distributions out of earnings and profits for a year during which a shareholder that is currently a more-than-90-percent United States shareholder of a controlled foreign corporation was not a United States shareholder of the controlled foreign corporation.
- (e) Information to be furnished.
- (f) Examples.
- (g) Effective date.

*§ 1.902-2 Treatment of deficits in post-1986 undistributed earnings and pre-1987 accumulated profits of a first-, second-, or third-tier corporation for purposes of computing an amount of foreign taxes deemed paid § 1.902-1.*

- (a) Carryback of deficits in post-1986 undistributed earnings of a first-, second-, or

third-tier corporation to pre-effective date taxable years.

- (1) Rule.
- (2) Examples.
- (b) Carryforward of deficits in pre-1987 accumulated profits of a first-, second-, or third-tier corporation to post-1986 undistributed earnings for purposes of section 902.
  - (1) General rule.
  - (2) Effect of pre-effective date deficit.
  - (3) Examples.

*§ 1.902-3 Credit for domestic corporate shareholder of a foreign corporation for foreign income taxes paid with respect to accumulated profits of taxable years of the foreign corporation beginning before January 1, 1987.*

- (a) Definitions.
  - (1) Domestic shareholder.
  - (2) First-tier corporation.
  - (3) Second-tier corporation.
  - (4) Third-tier corporation.
  - (5) Foreign income taxes.
  - (6) Dividend.
  - (7) Dividend received.
- (b) Domestic shareholder owning stock in a first-tier corporation.
  - (1) In general.
  - (2) Amount of foreign taxes deemed paid by a domestic shareholder.
- (c) First-tier corporation owning stock in a second-tier corporation.
  - (1) In general.
  - (2) Amount of foreign taxes deemed paid by a first-tier corporation.
- (d) Second-tier corporation owning stock in a third-tier corporation.
  - (1) In general.
  - (2) Amount of foreign taxes deemed paid by a second-tier corporation.
- (e) Determination of accumulated profits of a foreign corporation.
- (f) Taxes paid on or with respect to accumulated profits of a foreign corporation.
- (g) Determination of earnings and profits of a foreign corporation.
  - (1) Taxable year to which section 963 does not apply.
  - (2) Taxable year to which section 963 applies.
  - (3) Time and manner of making choice.
  - (4) Determination by district director.
- (h) Source of income from first-tier corporation and country to which tax is deemed paid.
  - (1) Source of income.
  - (2) Country to which taxes deemed paid.
- (i) United Kingdom income taxes paid with respect to royalties.
- (j) Information to be furnished.
- (k) Illustrations.
  - (1) Effective date.

§ 1.902-4 Rules for distributions attributable to accumulated profits for taxable years in which a first-tier corporation was a less developed country corporation.

- (a) In general.
- (b) Combined distributions.
- (c) Distributions of a first-tier corporation attributable to certain distributions from second- or third-tier corporations.
- (d) Illustrations.

[T.D. 8708, 62 FR 927, Jan. 7, 1997]

**§ 1.902-1 Credit for domestic corporate shareholder of a foreign corporation for foreign income taxes paid by the foreign corporation.**

(a) *Definitions and special effective date.* For purposes of section 902, this section, and § 1.902-2, the definitions provided in paragraphs (a) (1) through (12) of this section and the special effective date of paragraph (a)(13) of this section apply.

(1) *Domestic shareholder.* In the case of dividends received by a domestic corporation from a foreign corporation after December 31, 1986, the term domestic shareholder means a domestic corporation, other than an S corporation as defined in section 1361(a), that owns at least 10 percent of the voting stock of the foreign corporation at the time the domestic corporation receives a dividend from that foreign corporation.

(2) *First-tier corporation.* In the case of dividends received by a domestic shareholder from a foreign corporation in a taxable year beginning after December 31, 1986, the term first-tier corporation means a foreign corporation, at least 10 percent of the voting stock of which is owned by a domestic shareholder at the time the domestic shareholder receives a dividend from that foreign corporation. The term first-tier corporation also includes a DISC or former DISC, but only with respect to dividends from the DISC or former DISC that are treated under sections 861(a)(2)(D) and 862(a)(2) as income from sources without the United States.

(3) *Second-tier corporation.* In the case of dividends paid to a first-tier corporation by a foreign corporation in a taxable year beginning after December 31, 1986, the foreign corporation is a second-tier corporation if, at the time a first-tier corporation receives a dividend from that foreign corporation, the

first-tier corporation owns at least 10 percent of the foreign corporation's voting stock and the product of the following equals at least 5 percent—

(i) The percentage of voting stock owned by the domestic shareholder in the first-tier corporation; multiplied by

(ii) The percentage of voting stock owned by the first-tier corporation in the second-tier corporation.

(4) *Third-tier corporation.* In the case of dividends paid to a second-tier corporation by a foreign corporation in a taxable year beginning after December 31, 1986, a foreign corporation is a third-tier corporation if, at the time a second-tier corporation receives a dividend from that foreign corporation, the second-tier corporation owns at least 10 percent of the foreign corporation's voting stock and the product of the following equals at least 5 percent—

(i) The percentage of voting stock owned by the domestic shareholder in the first-tier corporation; multiplied by

(ii) The percentage of voting stock owned by the first-tier corporation in the second-tier corporation; multiplied by

(iii) The percentage of voting stock owned by the second-tier corporation in the third-tier corporation.

(5) *Example.* The following example illustrates the ownership requirements of paragraphs (a) (1) through (4) of this section:

*Example.* (i) Domestic corporation M owns 30 percent of the voting stock of foreign corporation A on January 1, 1991, and for all periods thereafter. Corporation A owns 40 percent of the voting stock of foreign corporation B on January 1, 1991, and continues to own that stock until June 1, 1991, when Corporation A sells its stock in Corporation B. Both Corporation A and Corporation B use the calendar year as the taxable year. Corporation B pays a dividend out of its post-1986 undistributed earnings to Corporation A, which Corporation A receives on February 16, 1991. Corporation A pays a dividend out of its post-1986 undistributed earnings to Corporation M, which Corporation M receives on January 20, 1992. Corporation M uses a fiscal year ending on June 30 as the taxable year.

(ii) On February 16, 1991, when Corporation B pays a dividend to Corporation A, Corporation M satisfies the 10 percent stock ownership requirement of paragraphs (a) (1) and (2) of this section with respect to Corporation