

§ 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

A. Therefore, Corporation A is a first-tier corporation within the meaning of paragraph (a)(2) of this section and Corporation M is a domestic shareholder of Corporation A within the meaning of paragraph (a)(1) of this section. Also on February 16, 1991, Corporation B is a second-tier corporation within the meaning of paragraph (a)(3) of this section because Corporation A owns at least 10 percent of its voting stock, and the percentage of voting stock owned by Corporation M in Corporation A on February 16, 1991 (30 percent) multiplied by the percentage of voting stock owned by Corporation A in Corporation B on February 16, 1991 (40 percent) equals 12 percent. Corporation A shall be deemed to have paid foreign income taxes of Corporation B with respect to the dividend received from Corporation B on February 16, 1991.

(iii) On January 20, 1992, Corporation M satisfies the 10-percent stock ownership requirement of paragraphs (a)(1) and (2) of this section with respect to Corporation A. Therefore, Corporation A is a first-tier corporation within the meaning of paragraph (a)(2) of this section and Corporation M is a domestic shareholder within the meaning of paragraph (a)(1) of this section. Accordingly, for its taxable year ending on June 30, 1992, Corporation M is deemed to have paid a portion of the post-1986 foreign income taxes paid, accrued, or deemed to be paid, by Corporation A. Those taxes will include taxes paid by Corporation B that were deemed paid by Corporation A with respect to the dividend paid by Corporation B to Corporation A on February 16, 1991, even though Corporation B is no longer a second-tier corporation with respect to Corporations A and M on January 20, 1992, and has not been a second-tier corporation with respect to Corporations A and M at any time during the taxable years of Corporations A and M that include January 20, 1992.

(6) *Upper- and lower-tier corporations.* In the case of a third-tier corporation, the term upper-tier corporation means a first- or second-tier corporation. In the case of a second-tier corporation, the term upper-tier corporation means a first-tier corporation. In the case of a first-tier corporation, the term lower-tier corporation means a second- or third-tier corporation. In the case of a second-tier corporation, the term lower-tier corporation means a third-tier corporation.

(7) *Foreign income taxes.* The term foreign income taxes means income, war profits, and excess profits taxes as defined in § 1.901-2(a), and taxes included in the term income, war profits, and excess profits taxes by reason of sec-

tion 903, that are imposed by a foreign country or a possession of the United States, including any such taxes deemed paid by a foreign corporation under this section. Foreign income, war profits, and excess profits taxes shall not include amounts excluded from the definition of those taxes pursuant to section 901 and the regulations under that section. See also paragraphs (c)(4) and (5) of this section (concerning foreign taxes paid with respect to foreign mineral income and in connection with the purchase or sale of oil and gas).

(8) *Post-1986 foreign income taxes—(i) In general.* Except as provided in paragraphs (a)(10) and (13) of this section, the term post-1986 foreign income taxes of a foreign corporation means the sum of the foreign income taxes paid, accrued, or deemed paid in the taxable year of the foreign corporation in which it distributes a dividend plus the foreign income taxes paid, accrued, or deemed paid in the foreign corporation's prior taxable years beginning after December 31, 1986, to the extent the foreign taxes were not paid or deemed paid by the foreign corporation on or with respect to earnings that in prior taxable years were distributed to, or otherwise included (e.g., under sections 304, 367(b), 551, 951(a), 1248 or 1293) in the income of, a foreign or domestic shareholder. Except as provided in paragraph (b)(4) of this section, foreign taxes paid or deemed paid by the foreign corporation on or with respect to earnings that were distributed or otherwise removed from post-1986 undistributed earnings in prior post-1986 taxable years shall be removed from post-1986 foreign income taxes regardless of whether the shareholder is eligible to compute an amount of foreign taxes deemed paid under section 902, and regardless of whether the shareholder in fact chose to credit foreign income taxes under section 901 for the year of the distribution or inclusion. Thus, if an amount is distributed or deemed distributed by a foreign corporation to a United States person that is not a domestic shareholder within the meaning of paragraph (a)(1) of this section (e.g., an individual or a corporation that owns less than 10% of the foreign corporation's voting stock), or to a foreign

person that does not meet the definition of a first- or second-tier corporation under paragraph (a)(2) or (3) of this section, then although no foreign income taxes shall be deemed paid under section 902, foreign income taxes attributable to the distribution or deemed distribution that would have been deemed paid had the shareholder met the ownership requirements of paragraphs (a)(1) through (4) of this section shall be removed from post-1986 foreign income taxes. Further, if a domestic shareholder chooses to deduct foreign taxes paid or accrued for the taxable year of the distribution or inclusion, it shall nonetheless be deemed to have paid a proportionate share of the foreign corporation's post-1986 foreign income taxes under section 902(a), and the foreign taxes deemed paid must be removed from post-1986 foreign income taxes. In the case of a foreign corporation the foreign income taxes of which are determined based on an accounting period of less than one year, the term year means that accounting period. See sections 441(b)(3) and 443.

(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.* Post-1986 foreign income taxes shall include foreign income taxes that are deemed paid by an upper-tier corporation with respect to distributions from a lower-tier corporation out of nonpreviously taxed pre-1987 accumulated profits, as defined in paragraph (a)(10) of this section, that are received by an upper-tier corporation in any taxable year of the upper-tier corporation beginning after December 31, 1986, provided the upper-tier corporation's earnings and profits in that year are included in its post-1986 undistributed earnings under paragraph (a)(9) of this section. Foreign income taxes deemed paid with respect to a distribution of pre-1987 accumulated profits shall be translated from the functional currency of the lower-tier corporation into dollars at the spot exchange rate in effect on the date of the distribution. To determine the character of the earnings and profits and associated taxes for foreign tax

credit limitation purposes, see section 904 and §1.904-7(a).

(iii) *Foreign income taxes paid or accrued with respect to high withholding tax interest.* Post-1986 foreign income taxes shall not include foreign income taxes paid or accrued by a noncontrolled section 902 corporation (as defined in section 904(d)(2)(E)(i)) with respect to high withholding tax interest (as defined in section 904(d)(2)(B)) to the extent the foreign tax rate imposed on such interest exceeds 5 percent. See section 904(d)(2)(E)(ii) and §1.904-4(g)(2)(iii). The reduction in foreign income taxes paid or accrued by the amount of tax in excess of 5 percent imposed on high withholding tax interest income must be computed in functional currency before foreign income taxes are translated into U.S. dollars and included in post-1986 foreign income taxes.

(9) *Post-1986 undistributed earnings—(i) In general.* Except as provided in paragraphs (a) (10) and (13) of this section, the term post-1986 undistributed earnings means the amount of the earnings and profits of a foreign corporation (computed in accordance with sections 964(a) and 986) accumulated in taxable years of the foreign corporation beginning after December 31, 1986, determined as of the close of the taxable year of the foreign corporation in which it distributes a dividend. Post-1986 undistributed earnings shall not be reduced by reason of any earnings distributed or otherwise included in income, for example under section 304, 367(b), 551, 951(a), 1248 or 1293, during the taxable year. Post-1986 undistributed earnings shall be reduced to account for distributions or deemed distributions that reduced earnings and profits and inclusions that resulted in previously-taxed amounts described in section 959(c) (1) and (2) or section 1293(c) in prior taxable years beginning after December 31, 1986. Thus, post-1986 undistributed earnings shall not be reduced to the extent of the ratable share of a controlled foreign corporation's subpart F income, as defined in section 952, attributable to a shareholder that is not a United States shareholder within the meaning of section 951(b) or section 953(c)(1)(A), because that amount has not been included in a

shareholder's gross income. Post-1986 undistributed earnings shall be reduced as provided herein regardless of whether any shareholder is deemed to have paid any foreign taxes, and regardless of whether any domestic shareholder chose to claim a foreign tax credit under section 901(a) for the year of the distribution. For rules on carrybacks and carryforwards of deficits and their effect on post-1986 undistributed earnings, see § 1.902-2. In the case of a foreign corporation the foreign income taxes of which are computed based on an accounting period of less than one year, the term year means that accounting period. See sections 441(b)(3) and 443.

(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.* Distributions by a lower-tier corporation out of non-previously taxed pre-1987 accumulated profits, as defined in paragraph (a)(10) of this section, that are received by an upper-tier corporation in any taxable year of the upper-tier corporation beginning after December 31, 1986, shall be treated as post-1986 undistributed earnings of the upper-tier corporation, provided the upper-tier corporation's earnings and profits for that year are included in its post-1986 undistributed earnings under paragraph (a)(9)(i) of this section. To determine the character of the earnings and profits and associated taxes for foreign tax credit limitation purposes, see section 904 and § 1.904-7(a).

(iii) *Reduction for foreign income taxes paid or accrued.* In computing post-1986 undistributed earnings, earnings and profits shall be reduced by foreign income taxes paid or accrued regardless of whether the taxes are creditable. Thus, earnings and profits shall be reduced by foreign income taxes paid with respect to high withholding tax interest even though a portion of the taxes is not creditable pursuant to section 904(d)(2)(E)(ii) and is not included in post-1986 foreign income taxes under paragraph (a)(8)(iii) of this section. Earnings and profits of an upper-tier corporation, however, shall not be reduced by foreign income taxes paid by

a lower-tier corporation and deemed to have been paid by the upper-tier corporation.

(iv) *Special allocations.* The term post-1986 undistributed earnings means the total amount of the earnings of the corporation determined at the corporate level. Special allocations of earnings and taxes to particular shareholders, whether required or permitted by foreign law or a shareholder agreement, shall be disregarded. If, however, the Commissioner establishes that there is an agreement to pay dividends only out of earnings in the separate categories for passive or high withholding tax interest income, then only taxes imposed on passive or high withholding tax interest earnings shall be treated as related to the dividend. See § 1.904-6(a)(2).

(10) *Pre-1987 accumulated profits—(i) Definition.* The term pre-1987 accumulated profits means the amount of the earnings and profits of a foreign corporation computed in accordance with section 902 and attributable to its taxable years beginning before January 1, 1987. If the special effective date of paragraph (a)(13) of this section applies, pre-1987 accumulated profits also includes any earnings and profits (computed in accordance with sections 964(a) and 986) attributable to the foreign corporation's taxable years beginning after December 31, 1986, but before the first day of the first taxable year of the foreign corporation in which the ownership requirements of section 902(c)(3)(B) and paragraphs (a) (1) through (4) of this section are met with respect to that corporation.

(ii) *Computation of pre-1987 accumulated profits.* Pre-1987 accumulated profits must be computed under United States principles governing the computation of earnings and profits. Pre-1987 accumulated profits are determined at the corporate level. Special allocations of accumulated profits and taxes to particular shareholders with respect to distributions of pre-1987 accumulated profits in taxable years beginning after December 31, 1986, whether required or permitted by foreign law or a shareholder agreement, shall be disregarded. Pre-1987 accumulated profits of a particular year shall be reduced

by amounts distributed from those accumulated profits or otherwise included in income from those accumulated profits, for example under sections 304, 367(b), 551, 951(a), 1248 or 1293. If a deficit in post-1986 undistributed earnings is carried back to offset pre-1987 accumulated profits, pre-1987 accumulated profits of a particular taxable year shall be reduced by the amount of the deficit carried back to that year. See §1.902-2. The amount of a distribution out of pre-1987 accumulated profits, and the amount of foreign income taxes deemed paid under section 902, shall be determined and translated into United States dollars by applying the law as in effect prior to the effective date of the Tax Reform Act of 1986. See §§1.902-3, 1.902-4 and 1.964-1.

(iii) *Foreign income taxes attributable to pre-1987 accumulated profits.* The term pre-1987 foreign income taxes means any foreign income taxes paid, accrued, or deemed paid by a foreign corporation on or with respect to its pre-1987 accumulated profits. Pre-1987 foreign income taxes of a particular year shall be reduced by the amount of taxes paid or deemed paid by the foreign corporation on or with respect to amounts distributed or otherwise included in income from pre-1987 accumulated profits of that year. Thus, pre-1987 foreign income taxes shall be reduced by the amount of taxes deemed paid by a domestic shareholder (regardless of whether the shareholder chose to credit foreign income taxes under section 901 for the year of the distribution or inclusion) or a first-tier or second-tier corporation, and by the amount of taxes that would have been deemed paid had any other shareholder been eligible to compute an amount of foreign taxes deemed paid under section 902. Foreign income taxes deemed paid with respect to a distribution of pre-1987 accumulated profits shall be translated from the functional currency of the distributing corporation into United States dollars at the spot exchange rate in effect on the date of the distribution.

(11) *Dividend.* For purposes of section 902, the definition of the term dividend in section 316 and the regulations under that section applies. Thus, for example, distributions and deemed dis-

tributions under sections 302, 304, 305(b) and 367(b) that are treated as dividends within the meaning of section 301(c)(1) also are dividends for purposes of section 902. In addition, the term dividend includes deemed dividends under sections 551 and 1248, but not deemed inclusions under sections 951(a) and 1293. For rules concerning excess distributions from section 1291 funds that are treated as dividends solely for foreign tax credit purposes, (see Regulation Project INTL-656-87 published in 1992-1 C.B. 1124; see §601.601(d)(2)(ii)(b) of this chapter).

(12) *Dividend received.* A dividend shall be considered received for purposes of section 902 when the cash or other property is unqualifiedly made subject to the demands of the distributee. See §1.301-1(b). A dividend also is considered received for purposes of section 902 when it is deemed received under section 304, 367(b), 551, or 1248.

(13) *Special effective date—(i) Rule.* If the first day on which the ownership requirements of section 902(c)(3)(B) and paragraphs (a)(1) through (4) of this section are met with respect to a foreign corporation, without regard to whether a dividend is distributed, is in a taxable year of the foreign corporation beginning after December 31, 1986, then—

(A) The post-1986 undistributed earnings and post-1986 foreign income taxes of the foreign corporation shall be determined by taking into account only taxable years beginning on and after the first day of the first taxable year of the foreign corporation in which the ownership requirements are met, including subsequent taxable years in which the ownership requirements of section 902(c)(3)(B) and paragraphs (a)(1) through (4) of this section are not met; and

(B) Earnings and profits accumulated prior to the first day of the first taxable year of the foreign corporation in which the ownership requirements of section 902(c)(3)(B) and paragraphs (a)(1) through (4) of this section are met shall be considered pre-1987 accumulated profits.

(ii) *Example.* The following example illustrates the special effective date rules of this paragraph (a)(13):

Example. As of December 31, 1991, and since its incorporation, foreign corporation A has owned 100 percent of the stock of foreign corporation B. Corporation B is not a controlled foreign corporation. Corporation B uses the calendar year as its taxable year, and its functional currency is the u. Assume lu equals \$1 at all relevant times. On April 1, 1992, Corporation B pays a 200u dividend to Corporation A and the ownership requirements of section 902(c)(3)(B) and paragraphs (a)(1) through (4) of this section are not met at that time. On July 1, 1992, domestic corporation M purchases 10 percent of the Corporation B stock from Corporation A and, for the first time, Corporation B meets the ownership requirements of section 902(c)(3)(B) and paragraph (a)(2) of this section. Corporation M uses the calendar year as its taxable year. Corporation B does not distribute any dividends to Corporation M during 1992. For its taxable year ending December 31, 1992, Corporation B has 500u of earnings and profits (after foreign taxes but before taking into account the 200u distribution to Corporation A) and pays 100u of foreign income taxes that is equal to \$100. Pursuant to paragraph (a)(13)(i) of this section, Corporation B's post-1986 undistributed earnings and post-1986 foreign income taxes will include earnings and profits and foreign income taxes attributable to Corporation B's entire 1992 taxable year and all taxable years thereafter. Thus, the April 1, 1992, dividend to Corporation A will reduce post-1986 undistributed earnings to 300u (500u-200u) under paragraph (a)(9)(i) of this section. The foreign income taxes attributable to the amount distributed as a dividend to Corporation A will not be creditable because Corporation A is not a domestic shareholder. Post-1986 foreign income taxes, however, will be reduced by the amount of foreign taxes attributable to the

dividend. Thus, as of the beginning of 1993, Corporation B has \$60 (\$100-[\$100×40% (200u/500u)]) of post-1986 foreign income taxes. See paragraphs (a)(8)(i) and (b)(1) of this section.

(b) *Computation of foreign income taxes deemed paid by a domestic shareholder, first-tier corporation, and second-tier corporation*—(1) *General rule.* If a foreign corporation pays a dividend in any taxable year out of post-1986 undistributed earnings to a shareholder that is a domestic shareholder or an upper-tier corporation at the time it receives the dividend, the recipient shall be deemed to have paid the same proportion of any post-1986 foreign income taxes paid, accrued or deemed paid by the distributing corporation on or with respect to post-1986 undistributed earnings which the amount of the dividend out of post-1986 undistributed earnings (determined without regard to the gross-up under section 78) bears to the amount of the distributing corporation's post-1986 undistributed earnings. An upper-tier corporation shall not be entitled to compute an amount of foreign taxes deemed paid on a dividend from a lower-tier corporation, however, unless the ownership requirements of paragraphs (a) (1) through (4) of this section are met at each tier at the time the upper-tier corporation receives the dividend. Foreign income taxes deemed paid by a domestic shareholder or an upper-tier corporation must be computed under the following formula:

$$\frac{\text{Foreign income taxes deemed paid by domestic shareholder (or upper-tier corporation)}}{\text{Post-1986 foreign income taxes of first-tier corporation (or lower-tier corporation)}} = \frac{\text{Dividend paid to domestic shareholder (or upper-tier corporation) by first-tier corporation (or lower-tier corporation)}}{\text{Post-1986 undistributed earnings of first-tier corporation (or lower-tier corporation)}}$$

(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.* Dividends will be deemed to be paid first out of post-1986 undis-

tributed earnings to the extent thereof. If dividends exceed post-1986 undistributed earnings and dividends are paid to more than one shareholder, then the dividend to each shareholder shall be deemed to be paid pro rata out of post-

1986 undistributed earnings, computed as follows:

$$\text{Portion of Dividend to a Shareholder Attributable to Post-1986 Undistributed Earnings} = \frac{\text{Post-1986 Undistributed Earnings}}{\text{Total Dividends Paid To all Shareholders}} \times \frac{\text{Dividends to Shareholder}}{\text{Total Dividends Paid To all Shareholders}}$$

(ii) *Portion of dividend out of pre-1987 accumulated profits.* After the portion of the dividend attributable to post-1986 undistributed earnings is determined under paragraph (b)(2)(i) of this section, the remainder of the dividend received by a shareholder is attributable to pre-1987 accumulated profits to the extent thereof. That part of the dividend attributable to pre-1987 accumulated profits will be treated as paid first from the most recently accumu-

lated earnings and profits. See §1.902-3. If dividends paid out of pre-1987 accumulated profits are attributable to more than one pre-1987 taxable year and are paid to more than one shareholder, then the dividend to each shareholder attributable to earnings and profits accumulated in a particular pre-1987 taxable year shall be deemed to be paid pro rata out of accumulated profits of that taxable year, computed as follows:

$$\text{Portion of Dividend to a Shareholder Attributable to Accumulated Profits of a Particular Pre-1987 Taxable Year} = \frac{\text{Dividend Paid Out of Pre-1987 Accumulated Profits with Respect to the Particular Pre-1987 Taxable Year}}{\text{Total Dividends Paid To all Shareholders}} \times \frac{\text{Dividends to Shareholder}}{\text{Total Dividends Paid To all Shareholders}}$$

(3) *Dividends paid out of pre-1987 accumulated profits.* If dividends are paid by a first-tier corporation or a lower-tier corporation out of pre-1987 accumulated profits, the domestic shareholder or upper-tier corporation that receives the dividends shall be deemed to have paid foreign income taxes to the extent provided under section 902 and the regulations thereunder as in effect prior to the effective date of the Tax Reform Act of 1986. See paragraphs (a) (10) and (13) of this section and §§1.902-3 and 1.902-4.

(4) *Deficits in accumulated earnings and profits.* No foreign income taxes shall be deemed paid with respect to a distribution from a foreign corporation out of current earnings and profits that is treated as a dividend under section 316(a)(2), and post-1986 foreign income taxes shall not be reduced, if as of the end of the taxable year in which the dividend is paid or accrued, the corporation has zero or a deficit in post-

1986 undistributed earnings and the sum of current plus accumulated earnings and profits is zero or less than zero. The dividend shall reduce post-1986 undistributed earnings and accumulated earnings and profits.

(5) *Examples.* The following examples illustrate the rules of this paragraph (b):

Example 1. Domestic corporation M owns 100 percent of foreign corporation A. Both Corporation M and Corporation A use the calendar year as the taxable year, and Corporation A uses the u as its functional currency. Assume that 1u equals \$1 at all relevant times. All of Corporation A's pre-1987 accumulated profits and post-1986 undistributed earnings are non-subpart F general limitation earnings and profits under section 904(d)(1)(D). As of December 31, 1992, Corporation A has 100u of post-1986 undistributed earnings and \$40 of post-1986 foreign income taxes. For its 1986 taxable year, Corporation A has accumulated profits of 200u (net of foreign taxes) and paid 60u of foreign income taxes on those earnings. In 1992, Corporation

A distributes 150u to Corporation M. Corporation A has 100u of post-1986 undistributed earnings and the dividend, therefore, is treated as paid out of post-1986 undistributed earnings to the extent of 100u. The first 100u distribution is from post-1986 undistributed earnings, and, because the distribution exhausts those earnings, Corporation M is deemed to have paid the entire amount of post-1986 foreign income taxes of Corporation A (\$40). The remaining 50u dividend is treated as a dividend out of 1986 accumulated profits under paragraph (b)(2) of this section. Corporation M is deemed to have paid \$15 (60u×50u/200u, translated at the appropriate exchange rates) of Corporation A's foreign income taxes for 1986. As of January 1, 1993, Corporation A's post-1986 undistributed earnings and post-1986 foreign income taxes are 0. Corporation A has 150u of accumulated profits and 45u of foreign income taxes remaining in 1986.

Example 2. Domestic corporation M (incorporated on January 1, 1987) owns 100 percent of foreign corporation A (incorporated on January 1, 1987). Both Corporation M and Corporation A use the calendar year as the taxable year, and Corporation A uses the u as its functional currency. Assume that 1u equals \$1 at all relevant times. Corporation A has no pre-1987 accumulated profits. All of Corporation A's post-1986 undistributed earnings are non-subpart F general limitation earnings and profits under section 904(d)(1)(I). On January 1, 1992, Corporation A has a deficit in accumulated earnings and profits and a deficit in post-1986 undistributed earnings of (200u). No foreign taxes have been paid with respect to post-1986 undistributed earnings. During 1992, Corporation A earns 100u (net of foreign taxes), pays \$40 of foreign taxes on those earnings and distributes 50u to Corporation M. As of the end of 1992, Corporation A has a deficit of (100u) ((200u) post-1986 undistributed earnings + 100u current earnings and profits) in post-1986 undistributed earnings. Corporation A, however, has current earnings and profits of 100u. Therefore, the 50u distribution is treated as a dividend in its entirety under section 316(a)(2). Under paragraph (b)(4) of this section, Corporation M is not deemed to have paid any of the foreign taxes paid by Corporation A because post-1986 undistributed earnings and the sum of current plus accumulated earnings and profits are (100u). The dividend reduces both post-1986 undistributed earnings and accumulated earnings and profits. Therefore, as of January 1, 1993, Corporation A's post-1986 undistributed earnings are (150u) and its accumulated earnings and profits are (150u). Corporation A's post-1986 foreign income taxes at the start of 1993 are \$40.

(c) *Special rules*—(1) *Separate computations required for dividends from each first-tier and lower-tier corporation*—(i)

Rule. If in a taxable year dividends are received by a domestic shareholder or an upper-tier corporation from two or more first-tier corporations or two or more lower-tier corporations, the foreign income taxes deemed paid by the domestic shareholder or the upper-tier corporation under sections 902 (a) and (b) and paragraph (b) of this section shall be computed separately with respect to the dividends received from each first-tier corporation or lower-tier corporation. If a domestic shareholder receives dividend distributions from one or more first-tier corporations and in the same taxable year the first-tier corporation receives dividends from one or more lower-tier corporations, then the amount of foreign income taxes deemed paid shall be computed by starting with the lowest-tier corporation and working upward.

(ii) *Example.* The following example illustrates the application of this paragraph (c)(1):

Example. P, a domestic corporation, owns 40 percent of the voting stock of foreign corporation S. S owns 30 percent of the voting stock of foreign corporation T, and 30 percent of the voting stock of foreign corporation U. Neither S, T, nor U is a controlled foreign corporation. P, S, T and U all use the calendar year as their taxable year. In 1993, T and U both pay dividends to S and S pays a dividend to P. To compute foreign taxes deemed paid, paragraph (c)(1) of this section requires P to start with the lowest tier corporations and to compute foreign taxes deemed paid separately for dividends from each first-tier and lower-tier corporation. Thus, S first will compute foreign taxes deemed paid separately on its dividends from T and U. The deemed paid taxes will be added to S's post-1986 foreign income taxes, and the dividends will be added to S's post-1986 undistributed earnings. Next, P will compute foreign taxes deemed paid with respect to the dividend from S. This computation will take into account the taxes paid by T and U and deemed paid by S.

(2) *Section 78 gross-up*—(i) *Foreign income taxes deemed paid by a domestic shareholder.* Except as provided in section 960(b) and the regulations under that section (relating to amounts excluded from gross income under section 959(b)), any foreign income taxes deemed paid by a domestic shareholder in any taxable year under section 902(a) and paragraph (b) of this section shall be included in the gross income of the

domestic shareholder for the year as a dividend under section 78. Amounts included in gross income under section 78 shall, for purposes of section 904, be deemed to be derived from sources within the United States to the extent the earnings and profits on which the taxes were paid are treated under section 904(g) as United States source earnings and profits. Section 1.904-5(m)(6). Amounts included in gross income under section 78 shall be treated for purposes of section 904 as income in a separate category to the extent that the foreign income taxes were allocated and apportioned to income in that separate category. See section 904(d)(3)(G) and §1.904-6(b)(3).

(ii) *Foreign income taxes deemed paid by an upper-tier corporation.* Foreign income taxes deemed paid by an upper-tier corporation on a distribution from a lower-tier corporation are not included in the earnings and profits of the upper-tier corporation. For purposes of section 904, foreign income taxes shall be allocated and apportioned to income in a separate category to the extent those taxes were allocated to the earnings and profits of the lower-tier corporation in that separate category. See section 904(d)(3)(G) and §1.904-6(b)(3). To the extent that section 904(g) treats the earnings of the lower-tier corporation on which those foreign income taxes were paid as United States source earnings and profits, the foreign income taxes deemed paid by the upper-tier corporation on the distribution from the lower-tier corporation shall be treated as attributable to United States source earnings and profits. See section 904(g) and §1.904-5(m)(6).

(iii) *Example.* The following example illustrates the rules of this paragraph (c)(2):

Example. P, a domestic corporation, owns 100 percent of the voting stock of controlled foreign corporation S. Corporations P and S use the calendar year as their taxable year, and S uses the u as its functional currency. Assume that 1u equals \$1 at all relevant times. As of January 1, 1992, S has -0- post-1986 undistributed earnings and -0- post-1986 foreign income taxes. In 1992, S earns 150u of non-subpart F general limitation income net of foreign taxes and pays 60u of foreign income taxes. As of the end of 1992, but before dividend payments, S has 150u of post-1986

undistributed earnings and \$60 of post-1986 foreign income taxes. Assume that 50u of S's earnings for 1992 are from United States sources. S pays P a dividend of 75u which P receives in 1992. Under §1.904-5(m)(4), one-third of the dividend, or 25u (75u×50u/150u), is United States source income to P. P computes foreign taxes deemed paid on the dividend under paragraph (b)(1) of this section of \$30 (60×50%[75u/150u]) and includes that amount in gross income under section 78 as a dividend. Because 25u of the 75u dividend is United States source income to P, \$10 (30×33.33%[25u/75u]) of the section 78 dividend will be treated as United States source income to P under this paragraph (c)(2).

(3) *Creditable foreign income taxes.* The amount of creditable foreign income taxes under section 901 shall include, subject to the limitations and conditions of sections 902 and 904, foreign income taxes actually paid and deemed paid by a domestic shareholder that receives a dividend from a first-tier corporation. Foreign income taxes deemed paid by a domestic shareholder under paragraph (b) of this section shall be deemed paid by the domestic shareholder only for purposes of computing the foreign tax credit allowed under section 901.

(4) *Foreign mineral income.* Certain foreign income, war profits and excess profits taxes paid or accrued with respect to foreign mineral income will not be considered foreign income taxes for purposes of section 902. See section 901(e) and §1.901-3.

(5) *Foreign taxes paid or accrued in connection with the purchase or sale of certain oil and gas.* Certain income, war profits, or excess profits taxes paid or accrued to a foreign country in connection with the purchase and sale of oil or gas extracted in that country will not be considered foreign income taxes for purposes of section 902. See section 901(f).

(6) *Foreign oil and gas extraction income.* For rules relating to reduction of the amount of foreign income taxes deemed paid with respect to foreign oil and gas extraction income, see section 907(a) and the regulations under that section.

(7) *United States shareholders of controlled foreign corporations.* See paragraph (d) of this section and sections 960 and 962 and the regulations under those sections for special rules relating to the application of section 902 in

computing foreign income taxes deemed paid by United States shareholders of controlled foreign corporations.

(8) *Credit for foreign taxes deemed paid in a section 304 transaction.* [Reserved].

(9) *Effect of section 482 adjustments on post-1986 foreign income taxes and post-1986 undistributed earnings.* [Reserved].

(d) *Dividends from controlled foreign corporations*—(1) *General rule.* Except as provided in paragraph (d)(3) of this section, if a dividend is received by a domestic shareholder that is a United States shareholder (as defined in section 951(b) or section 953(c)(1)(A)) from a first-tier corporation that is a controlled foreign corporation (as defined in section 957(a) or section 953(c)(1)(B)), or by an upper-tier corporation from a lower-tier corporation if the corporations are related look-through entities within the meaning of § 1.904-5(i), the following rule applies. If a dividend is paid out of post-1986 undistributed earnings or pre-1987 accumulated profits of the upper- or lower-tier controlled foreign corporation attributable to more than one separate category under section 904(d), the amount

of foreign income taxes deemed paid by the domestic shareholder or the upper-tier corporation under section 902 and paragraph (b) of this section shall be computed separately with respect to the post-1986 undistributed earnings or pre-1987 accumulated profits in each separate category out of which the dividend is paid. See § 1.904-5(c)(4) and paragraph (d)(2) of this section. The separately computed deemed paid taxes shall be added to other taxes paid by the U.S. shareholder or upper-tier corporation with respect to income in the appropriate separate category.

(2) *Look-through*—(i) *Dividends.* Except as otherwise provided in paragraph (d)(3) of this section, any dividend distribution out of post-1986 undistributed earnings of a look-through entity to a related look-through entity shall be deemed to be paid pro rata out of each separate category of income. See §§ 1.904-5(c)(4) and 1.904-7. The portion of the foreign income taxes attributable to a particular separate category that shall be deemed paid by the domestic shareholder or upper-tier corporation must be computed under the following formula:

$$\begin{array}{l} \text{Foreign taxes deemed} \\ \text{paid by domestic share-} \\ \text{holder or upper-tier cor-} \\ \text{poration with respect to a} \\ \text{separate category under} \\ \text{section 904(d)} \end{array} = \begin{array}{l} \text{Post-1986 foreign income} \\ \text{taxes of first-tier or lower-} \\ \text{tier corporation allocated} \\ \text{and apportioned to a sepa-} \\ \text{rate category under} \\ \text{section 1.904-6} \end{array} \times \frac{\begin{array}{l} \text{Dividend amount attrib-} \\ \text{utable to a separate} \\ \text{category} \end{array}}{\begin{array}{l} \text{Post-1986 undistributed} \\ \text{earnings of first-tier or} \\ \text{lower-tier corporation at-} \\ \text{tributable to the separate} \\ \text{category} \end{array}}$$

(ii) *Coordination with section 960.* For rules coordinating the computation of foreign taxes deemed paid with respect to amounts included in gross income under section 951(a) and dividends distributed by a controlled foreign corporation, see section 960 and the regulations under that section.

(3) *Dividends distributed out of earnings accumulated before a controlled foreign corporation became a controlled foreign corporation*—(i) *General rule.* Any dividend distributed by a controlled foreign corporation out of earnings accumulated before the controlled foreign

corporation became a controlled foreign corporation shall be treated as a dividend from a noncontrolled section 902 corporation regardless of whether the earnings were accumulated in a taxable year beginning before January 1, 1987, or after December 31, 1986.

(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.* For rules regarding dividend distributions before

August 6, 1997, to certain more-than-90-percent United States shareholders of a controlled foreign corporation, see § 1.904-4(g)(3)(ii).

(e) *Information to be furnished.* If the credit for foreign income taxes claimed under section 901 includes foreign income taxes deemed paid under section 902 and paragraph (b) of this section, the domestic shareholder must furnish the same information with respect to the foreign income taxes deemed paid as it is required to furnish with respect to the foreign income taxes it directly paid or accrued and for which the credit is claimed. See § 1.905-2. For other information required to be furnished by the domestic shareholder for the annual accounting period of certain foreign corporations ending with or within the shareholder's taxable year, and for reduction in the amount of foreign income taxes paid, accrued, or deemed paid for failure to furnish the required information, see section 6038 and the regulations under that section.

(f) *Examples.* The following examples illustrate the application of this section:

Example 1. Since 1987, domestic corporation M has owned 10 percent of the one class of stock of foreign corporation A. The remaining 90 percent of Corporation A's stock is owned by Z, a foreign corporation. Corpora-

tion A is not a controlled foreign corporation. Corporation A uses the u as its functional currency, and 1u equals \$1 at all relevant times. Both Corporation A and Corporation M use the calendar year as the taxable year. In 1992, Corporation A pays a 30u dividend out of post-1986 undistributed earnings, 3u to Corporation M and 27u to Corporation Z. Corporation M is deemed, under paragraph (b) of this section, to have paid a portion of the post-1986 foreign income taxes paid by Corporation A and includes the amount of foreign taxes deemed paid in gross income under section 78 as a dividend. Both the foreign taxes deemed paid and the dividend would be subject to a separate limitation for dividends from Corporation A, a non-controlled section 902 corporation. Under paragraph (a)(9)(i) of this section, Corporation A must reduce its post-1986 undistributed earnings as of January 1, 1993, by the total amount of dividends paid to Corporation M and Corporation Z in 1992. Under paragraph (a)(8)(i) of this section, Corporation A must reduce its post-1986 foreign income taxes as of January 1, 1993, by the amount of foreign income taxes that were deemed paid by Corporation M and by the amount of foreign income taxes that would have been deemed paid by Corporation Z had Corporation Z been eligible to compute an amount of foreign income taxes deemed paid with respect to the dividend received from Corporation A. Foreign income taxes deemed paid by Corporation M and Corporation A's opening balances in post-1986 undistributed earnings and post-1986 foreign income taxes for 1993 are computed as follows:

1. Assumed post-1986 undistributed earnings of Corporation A at start of 1992.	25u
2. Assumed post-1986 foreign income taxes of Corporation A at start of 1992.	\$25
3. Assumed pre-tax earnings and profits of Corporation A for 1992	50u
4. Assumed foreign income taxes paid or accrued by Corporation A in 1992.	15u
5. Post-1986 undistributed earnings in Corporation A for 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4).	60u
6. Post-1986 foreign income taxes in Corporation A for 1992 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates).	\$40
7. Dividends paid out of post-1986 undistributed earnings of Corporation A to Corporation M in 1992.	3u
8. Percentage of Corporation A's post-1986 undistributed earnings paid to Corporation M (Line 7 divided by Line 5).	5%
9. Foreign income taxes of Corporation A deemed paid by Corporation M under section 902(a) (Line 6 multiplied by Line 8).	\$2
10. Total dividends paid out of post-1986 undistributed earnings of Corporation A to all shareholders in 1992.	30u
11. Percentage of Corporation A's post-1986 undistributed earnings paid to all shareholders in 1992 (Line 10 divided by Line 5).	50%

- 12. Post-1986 foreign income taxes paid with respect to post-1986 undistributed earnings distributed to all shareholders in 1992 (Line 6 multiplied by Line 11). \$20
- 13. Corporation A's post-1986 undistributed earnings at the start of 1993 (Line 5 minus Line 10). 30u
- 14. Corporation A's post-1986 foreign income taxes at the start of 1993 (Line 6 minus Line 12). \$20

Example 2. (i) The facts are the same as in *Example 1*, except that Corporation M has also owned 10 percent of the one class of stock of foreign corporation B since 1987. Corporation B uses the calendar year as the taxable year. The remaining 90 percent of Corporation B's stock is owned by Corporation Z. Corporation B is not a controlled foreign corporation. Corporation B uses the u as its functional currency, and 1u equals \$1 at all relevant times. In 1992, Corporation B has earnings and profits and pays foreign income taxes, a portion of which are attributable to high withholding tax interest, as defined in section 904(d)(2)(B)(i). Corporation B must reduce its pool of post-1986 foreign income taxes by the amount of tax imposed on high

withholding tax interest in excess of 5 percent because that amount is not treated as a tax for purposes of section 902. See section 904(d)(2)(E)(ii) and paragraph (a)(8)(iii) of this section. Corporation B pays 50u in dividends in 1992, 5u to Corporation M and 45u to Corporation Z. Corporation M must compute its section 902(a) deemed paid taxes separately for the dividends it receives in 1992 from Corporation A (as computed in *Example 1*) and from Corporation B. Foreign income taxes of Corporation B deemed paid by Corporation M, and Corporation B's opening balances in post-1986 undistributed earnings and post-1986 foreign income taxes for 1993 are computed as follows:

- 1. Assumed post-1986 undistributed earnings of Corporation B at start of 1992. (100u)
- 2. Assumed post-1986 foreign income taxes of Corporation B at start of 1992. \$0
- 3. Assumed pre-tax earnings and profits of Corporation B for 1992 (including 50u of high withholding tax interest on which 5u of tax is withheld). 302.50u
- 4. Assumed foreign income taxes paid or accrued by Corporation B in 1992. 102.50u
- 5. Post-1986 undistributed earnings in Corporation B for 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4). 100u
- 6. Amount of foreign income tax of Corporation B imposed on high withholding tax interest in excess of 5% (5u withholding tax—[5%×50u high withholding tax interest]). 2.50u
- 7. Post-1986 foreign income taxes in Corporation B for 1992 (pre-dividend) (Line 2 plus [Line 4 minus Line 6 translated at the appropriate exchange rate]). \$100
- 8. Dividends paid out of post-1986 undistributed earnings to Corporation M in 1992. 5u
- 9. Percentage of Corporation B's post-1986 undistributed earnings paid to Corporation M (Line 8 divided by Line 5). 5%
- 10. Foreign income taxes of Corporation B deemed paid by Corporation M under section 902(a) (Line 7 multiplied by Line 9). \$5
- 11. Total dividends paid out of post-1986 undistributed earnings of Corporation B to all shareholders in 1992. 50u
- 12. Percentage of Corporation B's post-1986 undistributed earnings paid to all shareholders in 1992 (Line 11 divided by Line 5). 50%
- 13. Post-1986 foreign income taxes of Corporation B paid on or with respect to post-1986 undistributed earnings distributed to all shareholders in 1992 (Line 7 multiplied by Line 12). \$50
- 14. Corporation B's post-1986 undistributed earnings at start of 1993 (Line 5 minus Line 11). 50u
- 15. Corporation B's post-1986 foreign income taxes at start of 1993 (Line 7 minus Line 13). \$50

(ii) For 1992, as computed in *Example 1*, Corporation M is deemed to have paid \$2 of the post-1986 foreign income taxes paid by Corporation A and includes \$2 in gross income as a dividend under section 78. Both the income inclusion and the credit are subject to a separate limitation for dividends from Corporation A, a noncontrolled section 902 corporation. Corporation M also is deemed to have paid \$5 of the post-1986 foreign income taxes paid by Corporation B and includes \$5 in gross income as a deemed dividend under section 78. Both the income inclusion and the foreign taxes deemed paid are subject to a separate limitation for dividends from Corporation B, a noncontrolled section 902 corporation.

Example 3. (i) Since 1987, domestic corporation M has owned 50 percent of the one class of stock of foreign corporation A. The remaining 50 percent of Corporation A is owned by foreign corporation Z. For the same time period, Corporation A has owned 40 percent of the one class of stock of foreign corporation B, and Corporation B has owned 30 percent of the one class of stock of foreign corporation C. The remaining 60 percent of Corporation B is owned by foreign corporation Y, and the remaining 70 percent of Corporation C is owned by foreign corporation X. Corporations A, B, and C are not con-

trolled foreign corporations. Corporations A, B, and C use the u as their functional currency, and 1u equals \$1 at all relevant times. Corporation B uses a fiscal year ending June 30 as its taxable year; all other corporations use the calendar year as the taxable year. On February 1, 1992, Corporation C pays a 500u dividend out of post-1986 undistributed earnings, 150u to Corporation B and 350u to Corporation X. On February 15, 1992, Corporation B pays a 300u dividend out of post-1986 undistributed earnings computed as of the close of Corporation B's fiscal year ended June 30, 1992, 120u to Corporation A and 180u to Corporation Y. On August 15, 1992, Corporation A pays a 200u dividend out of post-1986 undistributed earnings, 100u to Corporation M and 100u to Corporation Z. In computing foreign taxes deemed paid by Corporations B and A, section 78 does not apply and Corporations B and A thus do not have to include the foreign taxes deemed paid in earnings and profits. See paragraph (c)(2)(ii) of this section. Foreign income taxes deemed paid by Corporations B, A and M, and the foreign corporations' opening balances in post-1986 undistributed earnings and post-1986 foreign income taxes for Corporation B's fiscal year beginning July 1, 1992, and Corporation C's and Corporation A's 1993 calendar years are computed as follows:

A. Corporation C (third-tier corporation):

1. Assumed post-1986 undistributed earnings in Corporation C at start of 1992.	1300u
2. Assumed post-1986 foreign income taxes in Corporation C at start of 1992.	\$500
3. Assumed pre-tax earnings and profits of Corporation C for 1992 ..	500u
4. Assumed foreign income taxes paid or accrued in 1992	300u
5. Post-1986 undistributed earnings in Corporation C for 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4).	1500u
6. Post-1986 foreign income taxes in Corporation C for 1992 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates).	\$800
7. Dividends paid out of post-1986 undistributed earnings of Corporation C to Corporation B in 1992.	150u
8. Percentage of Corporation C's post-1986 undistributed earnings paid to Corporation B (Line 7 divided by Line 5).	10%
9. Foreign income taxes of Corporation C deemed paid by Corporation B under section 902(b)(2) (Line 6 multiplied by Line 8).	\$80
10. Total dividends paid out of post-1986 undistributed earnings of Corporation C to all shareholders in 1992.	500u
11. Percentage of Corporation C's post-1986 undistributed earnings paid to all shareholders in 1992 (Line 10 divided by Line 5).	33.33%
12. Post-1986 foreign income taxes paid with respect to post-1986 undistributed earnings distributed to all shareholders in 1992 (Line 6 multiplied by Line 11).	\$266.66
13. Post-1986 undistributed earnings in Corporation C at start of 1993 (Line 5 minus Line 10).	1000u
14. Post-1986 foreign income taxes in Corporation C at start of 1993 (Line 6 minus Line 12).	\$533.34

B. Corporation B (second-tier corporation):

1. Assumed post-1986 undistributed earnings in Corporation B as of July 1, 1991.	0
2. Assumed post-1986 foreign income taxes in Corporation B as of July 1, 1991.	0
3. Assumed pre-tax earnings and profits of Corporation B for fiscal year ended June 30, 1992, (including 150u dividend from Corporation B).	1000u
4. Assumed foreign income taxes paid or accrued by Corporation B in fiscal year ended June 30, 1992.	200u
5. Foreign income taxes of Corporation C deemed paid by Corporation B in its fiscal year ended June 30, 1992 (Part A, Line 9 of paragraph (i) of this Example 3).	\$80
6. Post-1986 undistributed earnings in Corporation B for fiscal year ended June 30, 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4).	800u
7. Post-1986 foreign income taxes in Corporation B for fiscal year ended June 30, 1992 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates plus Line 5).	\$280
8. Dividends paid out of post-1986 undistributed earnings of Corporation B to Corporation A on February 15, 1992.	120u
9. Percentage of Corporation B's post-1986 undistributed earnings for fiscal year ended June 30, 1992, paid to Corporation A (Line 8 divided by Line 6).	15%
10. Foreign income taxes paid and deemed paid by Corporation B as of June 30, 1992, deemed paid by Corporation A under section 902(b)(1) (Line 7 multiplied by Line 9).	\$42
11. Total dividends paid out of post-1986 undistributed earnings of Corporation B for fiscal year ended June 30, 1992.	300u
12. Percentage of Corporation B's post-1986 undistributed earnings for fiscal year ended June 30, 1992, paid to all shareholders (Line 11 divided by Line 6).	37.5%
13. Post-1986 foreign income taxes paid and deemed paid with respect to post-1986 undistributed earnings distributed to all shareholders during Corporation B's fiscal year ended June 30, 1992 (Line 7 multiplied by Line 12).	\$105
14. Post-1986 undistributed earnings in Corporation B as of July 1, 1992 (Line 6 minus Line 11).	500u
15. Post-1986 foreign income taxes in Corporation B as of July 1, 1992 (Line 7 minus Line 13).	\$175
C. Corporation A (first-tier corporation):	
1. Assumed post-1986 undistributed earnings in Corporation A at start of 1992.	250u
2. Assumed post-1986 foreign income taxes in Corporation A at start of 1992.	\$100
3. Assumed pre-tax earnings and profits of Corporation A for 1992 (including 120u dividend from Corporation B).	250u
4. Assumed foreign income taxes paid or accrued by Corporation A in 1992.	100u
5. Foreign income taxes paid or deemed paid by Corporation B as of June 30, 1992, that are deemed paid by Corporation A in 1992 (Part B, Line 10 of paragraph (i) of this Example 3).	\$42
6. Post-1986 undistributed earnings in Corporation A for 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4).	400u
7. Post-1986 foreign income taxes in Corporation A for 1992 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates plus Line 5).	\$242
8. Dividends paid out of post-1986 undistributed earnings of Corporation A to Corporation M on August 15, 1992.	100u

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9. Percentage of Corporation A's post-1986 undistributed earnings paid to Corporation M in 1992 (Line 8 divided by Line 6).	25%
10. Foreign income taxes paid and deemed paid by Corporation A in 1992 that are deemed paid by Corporation M under section 902(a) (Line 7 multiplied by Line 9).	\$60.50
11. Total dividends paid out of post-1986 undistributed earnings of Corporation A to all shareholders in 1992.	200u
12. Percentage of Corporation A's post-1986 undistributed earnings paid to all shareholders in 1992 (Line 11 divided by Line 6).	50%
13. Post-1986 foreign income taxes paid and deemed paid by Corporation A with respect to post-1986 undistributed earnings distributed to all shareholders in 1992 (Line 7 multiplied by Line 12).	\$121
14. Post-1986 undistributed earnings in Corporation A at start of 1993 (Line 6 minus Line 11).	200u
15. Post-1986 foreign income taxes in Corporation A at start of 1993 (Line 7 minus Line 13).	\$121

(ii) Corporation M is deemed, under section 902(a) and paragraph (b) of this section, to have paid \$60.50 of post-1986 foreign income taxes paid, or deemed paid, by Corporation A on or with respect to its post-1986 undistributed earnings (Part C, Line 10) and Corporation M includes that amount in gross income as a dividend under section 78. Both the income inclusion and the credit are subject to a separate limitation for dividends from Corporation A, a noncontrolled section 902 corporation.

Example 4. (i) Since 1987, domestic corporation M has owned 100 percent of the voting stock of controlled foreign corporation A, and Corporation A has owned 100 percent of the voting stock of controlled foreign corporation B. Corporations M, A and B use the calendar year as the taxable year. Corporations A and B are organized in the same foreign country and use the u as their functional currency. 1u equals \$1 at all relevant times. Assume that all of the earnings of Corporations A and B are general limitation earnings and profits within the meaning of section 904(d)(2)(I), and that neither Corporation A nor Corporation B has any previously taxed income accounts. In 1992, Corporation B pays a dividend of 150u to Corporation A out of post-1986 undistributed earnings, and Corporation A computes an amount of foreign taxes deemed paid under section 902(b)(1). The dividend is not subpart F in-

come to Corporation A because section 954(c)(3)(B)(i) (the same country dividend exception) applies. Pursuant to paragraph (c)(2)(ii) of this section, Corporation A is not required to include the deemed paid taxes in earnings and profits. Corporation A has no pre-1987 accumulated profits and a deficit in post-1986 undistributed earnings for 1992. In 1992, Corporation A pays a dividend of 100u to Corporation M out of its earnings and profits for 1992 (current earnings and profits). Under paragraph (b)(4) of this section, Corporation M is not deemed to have paid any of the foreign income taxes paid or deemed paid by Corporation A because Corporation A has a deficit in post-1986 undistributed earnings as of December 31, 1992, and the sum of its current plus accumulated profits is less than zero. Note that if instead of paying a dividend to Corporation A in 1992, Corporation B had made an additional investment of \$150 in United States property under section 956, that amount would have been included in gross income by Corporation M under section 951(a)(1)(B) and Corporation M would have been deemed to have paid \$50 of foreign income taxes paid by Corporation B. See sections 951(a)(1)(B) and 960. Foreign income taxes of Corporation B deemed paid by Corporation A and the opening balances in post-1986 undistributed earnings and post-1986 foreign income taxes for Corporation A and Corporation B for 1993 are computed as follows:

A. Corporation B (second-tier corporation):

1. Assumed post-1986 undistributed earnings in Corporation B at start of 1992.	200u
2. Assumed post-1986 foreign income taxes in Corporation B at start of 1992.	\$50
3. Assumed pre-tax earnings and profits of Corporation B for 1992 ..	150u
4. Assumed foreign income taxes paid or accrued in 1992	50u
5. Post-1986 undistributed earnings in Corporation B for 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4).	300u

- 6. Post-1986 foreign income taxes in Corporation B for 1992 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates). \$100
- 7. Dividends paid out of post-1986 undistributed earnings of Corporation B to Corporation A in 1992. 150u
- 8. Percentage of Corporation B's post-1986 undistributed earnings paid to Corporation A (Line 7 divided by Line 5). 50%
- 9. Foreign income taxes of Corporation B deemed paid by Corporation A under section 902(b)(1) (Line 6 multiplied by Line 8). \$50
- 10. Post-1986 undistributed earnings in Corporation B at start of 1993 (Line 5 minus Line 7). 150u
- 11. Post-1986 foreign income taxes in Corporation B at start of 1993 (Line 6 minus Line 9). \$50
- B. Corporation A (first-tier corporation):
 - 1. Assumed post-1986 undistributed earnings in Corporation A at start of 1992. (200u)
 - 2. Assumed post-1986 foreign income taxes in Corporation A at start of 1992. 0
 - 3. Assumed pre-tax earnings and profits of Corporation A for 1992 (including 150u dividend from Corporation B). 200u
 - 4. Assumed foreign income taxes paid or accrued by Corporation A in 1992. 40u
 - 5. Foreign income taxes paid by Corporation B in 1992 that are deemed paid by Corporation A (Part A, Line 9 of paragraph (i) of this Example 4). \$50
 - 6. Post-1986 undistributed earnings in Corporation A for 1992 (pre-dividend) (Line 1 plus Line 3 minus Line 4). (40u)
 - 7. Post-1986 foreign income taxes in Corporation A for 1992 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates plus Line 5). \$90
 - 8. Dividends paid out of current earnings and profits of Corporation A for 1992. 100u
 - 9. Percentage of post-1986 undistributed earnings of Corporation A paid to Corporation M in 1992 (Line 8 divided by the greater of Line 6 or zero). 0
 - 10. Foreign income taxes paid and deemed paid by Corporation A in 1992 that are deemed paid by Corporation M under section 902(a) (Line 7 multiplied by Line 9). 0
 - 11. Post-1986 undistributed earnings in Corporation A at start of 1993 (line 6 minus line 8). (140u)
 - 12. Post-1986 foreign income taxes in Corporation A at start of 1993 (Line 7 minus Line 10). \$90

(ii) For 1993, Corporation A has 500u of earnings and profits on which it pays 160u of foreign income taxes. Corporation A receives no dividends from Corporation B, and pays a 100u dividend to Corporation M. The 100u dividend to Corporation M carries with it some of the foreign income taxes paid and deemed paid by Corporation A in 1992, which were not deemed paid by Corporation M in 1992 because Corporation A had no post-1986 undistributed earnings. Thus, for 1993, Corporation M is deemed to have paid \$125 of post-1986 foreign income taxes paid and deemed paid by Corporation A and includes that amount in gross income as a dividend under section 78, determined as follows:

- 1. Post-1986 undistributed earnings in Corporation A at start of 1993 (140u)
- 2. Post-1986 foreign income taxes in Corporation A at start of 1993 \$90
- 3. Pre-tax earnings and profits of Corporation A for 1993 500u
- 4. Foreign income taxes paid or accrued by Corporation A in 1993 160u
- 5. Post-1986 undistributed earnings in Corporation A for 1993 (pre-dividend) (Line 1 plus Line 3 minus Line 4). 200u

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- 6. Post-1986 foreign income taxes in Corporation A for 1993 (pre-dividend) (Line 2 plus Line 4 translated at the appropriate exchange rates). \$250
- 7. Dividends paid out of post-1986 undistributed earnings of Corporation A to Corporation M in 1993. 100u
- 8. Percentage of post-1986 undistributed earnings of Corporation A paid to Corporation M in 1993 (Line 7 divided by Line 5). 50%
- 9. Foreign income taxes paid and deemed paid by Corporation A that are deemed paid by Corporation M in 1993 (Line 6 multiplied by Line 8). \$125
- 10. Post-1986 undistributed earnings in Corporation A at start of 1994 (Line 5 minus Line 7). 100u
- 11. Post-1986 foreign income taxes in Corporation A at start of 1994 (Line 6 minus Line 9). \$125

Example 5. (i) Since 1987, domestic corporation M has owned 100 percent of the voting stock of controlled foreign corporation A. Corporation M also conducts operations through a foreign branch. Both Corporation A and Corporation M use the calendar year as the taxable year. Corporation A uses the u as its functional currency and 1u equals \$1 at all relevant times. Corporation A has no subpart F income, as defined in section 952, and no increase in earnings invested in United States property under section 956 for 1992. Corporation A also has no previously taxed income accounts. Corporation A has general limitation income and high withholding tax interest income that, by oper-

ation of section 954(b)(4), does not constitute foreign base company income under section 954(a). Because Corporation A is a controlled foreign corporation, it is not required to reduce post-1986 foreign income taxes by foreign taxes paid or accrued with respect to high withholding tax interest in excess of 5 percent. See §1.902-1(a)(8)(iii). Corporation A pays a 60u dividend to Corporation M in 1992. For 1992, Corporation M is deemed, under paragraph (b) of this section, to have paid \$24 of the post-1986 foreign income taxes paid by Corporation A and includes that amount in gross income under section 78 as a dividend, determined as follows:

- 1. Assumed post-1986 undistributed earnings in Corporation A at start of 1992 attributable to:
 - (a) Section 904(d)(1)(B) high withholding tax interest 20u
 - (b) Section 904(d)(1)(I) general limitation income 55u
- 2. Assumed post-1986 foreign income taxes in Corporation A at start of 1992 attributable to:
 - (a) Section 904(d)(1)(B) high withholding tax interest \$5
 - (b) Section 904(d)(1)(I) general limitation income \$20
- 3. Assumed pre-tax earnings and profits of Corporation A for 1992 attributable to:
 - (a) Section 904(d)(1)(B) high withholding tax interest 20u
 - (b) Section 904(d)(1)(I) general limitation income 20u
- 4. Assumed foreign income taxes paid or accrued in 1992 on or with respect to:
 - (a) Section 904(d)(1)(B) high withholding tax interest 10u
 - (b) Section 904(d)(1)(I) general limitation income 5u
- 5. Post-1986 undistributed earnings in Corporation A for 1992 (pre-dividend) attributable to:
 - (a) Section 904(d)(1)(B) high withholding tax interest (Line 1(a) + Line 3(a) minus Line 4(a)). 30u
 - (b) Section 904(d)(1)(I) general limitation income (Line 1(b) + Line 3(b) minus Line 4(b)). 70u
 - (c) Total 100u
- 6. Post-1986 foreign income taxes in Corporation A for 1992 (pre-dividend) attributable to:
 - (a) Section 904(d)(1)(B) high withholding tax interest (Line 2(a) + Line 4(a) translated at the appropriate exchange rates). \$15

(b) Section 904(d)(1)(I) general limitation income (Line 2(b) + Line 4(b) translated at the appropriate exchange rates).	\$25
7. Dividends paid to Corporation M in 1992	60u
8. Dividends paid to Corporation M in 1992 attributable to section 904(d) separate categories pursuant to §1.904-5(d):	
(a) Dividends paid to Corporation M in 1992 attributable to section 904(d)(1)(B) high withholding tax interest (Line 7 multiplied by Line 5(a) divided by Line 5(c)).	18u
(b) Dividends paid to Corporation M in 1992 attributable to section 904(d)(1)(I) general limitation income (Line 7 multiplied by Line 5(b) divided by Line 5(c)).	42u
9. Percentage of Corporation A's post-1986 undistributed earnings for 1992 paid to Corporation M attributable to:	
(a) Section 904(d)(1)(B) high withholding tax interest (Line 8(a) divided by Line 5(a)).	60%
(b) Section 904(d)(1)(I) general limitation income (Line 8(b) divided by Line 5(b)).	60%
10. Foreign income taxes of Corporation A deemed paid by Corporation M under section 902(a) attributable to:	
(a) Foreign income taxes of Corporation A deemed paid by Corporation M under section 902(a) with respect to section 904(d)(1)(B) high withholding tax interest (Line 6(a) multiplied by Line 9(a)).	\$9
(b) Foreign income taxes of Corporation A deemed paid by Corporation M under section 902(a) with respect to section 904(d)(1)(I) general limitation income (Line 6(b) multiplied by Line 9(b)).	\$15
11. Post-1986 undistributed earnings in Corporation A at start of 1993 attributable to:	
(a) Section 904(d)(1)(B) high withholding tax interest (Line 5(a) minus Line 8(a)).	12u
(b) Section 904(d)(1)(I) general limitation income (Line 5(b) minus Line 8(b)).	28u
12. Post-1986 foreign income taxes in Corporation A at start of 1989 allocable to:	
(a) Section 904(d)(1)(B) high withholding tax interest (Line 6(a) minus Line 10(a)).	\$6
(b) Section 904(d)(1)(I) general limitation income (Line 6(b) minus Line 10(b)).	\$10

(ii) For purposes of computing Corporation M's foreign tax credit limitation, the post-1986 foreign income taxes of Corporation A deemed paid by Corporation M with respect to income in separate categories will be added to the foreign income taxes paid or accrued by Corporation M associated with income derived from Corporation M's branch operation in the same separate categories. The dividend (and the section 78 inclusion with respect to the dividend) will be treated as income in separate categories and added to Corporation M's other income, if any, attributable to the same separate categories. See section 904(d) and §1.904-6.

(g) *Effective date.* This section applies to any distribution made in and after a

foreign corporation's first taxable year beginning on or after January 1, 1987.

[T.D. 8708, 62 FR 928, Jan. 7, 1997, as amended by T.D. 8916, 66 FR 274, Jan. 3, 2001]

§ 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 under § 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.* For purposes of computing foreign income taxes deemed paid under §1.902-1(b)