year as the taxable year. Corporations M and R, which are not related persons, agree that from July 1, 1963, through December 31, 1963, B Corporation will reinsure all risks of M Corporation which are United States risks described in section 953(a)(1)(A), and that from January 1, 1964, through June 30, 1964, A Corporation will reinsure all risks of R Corporation which are not United States risks described in section 953(a)(1)(A). The amount of premiums received by A Corporation and B Corporation, respectively, as a result of the agreement are substantially equal. The income of A Corporation derived in 1964 from reinsuring the risks of R Corporation is income derived from the insurance of United States risks described in section 953(a)(1)(B).

*Example 2.* Assume the same facts as in example 1, except that M and R Corporations also agree, as part of their arrangement, that from July 1, 1964, through December 31, 1964, B Corporation will reinsure all risks of M Corporation which are United States risks described in section 953(a)(1)(A), and that from January 1, 1965, through June 30, 1965, A Corporation will reinsure all risks of R Corporation which are not United States risks described in section 953(a)(1)(A). The amount of premiums derived by B Corporation from July 1, 1963, through December 31, 1963, under the agreement is not substantially equal to the amount of premiums derived by A Corporation from January 1, 1964, through June 30, 1964, and the amount of premiums derived by B Corporation from July 1, 1964, through December 31, 1964, is not substantially equal to the amount of premiums derived by A Corporation from January 1, 1965, through June 30, 1965. However, the aggregate amount of premiums received by B Corporation under the arrangement is substantially equal to the aggregate amount of premiums received by A Corporation. The income of A Corporation derived in 1964 and 1965 from reinsuring the risks of R Corporation is income derived from the insurance of United States risks described in section 953(a)(1)(B).

*Example 3.* Assume the same facts as in example 1, except that foreign corporation C is also a wholly owned subsidiary of R Corporation. Assume that C Corporation uses the calendar year as its taxable year. Assume further that M Corporation and R Corporation agree that from July 1, 1963, through December 31, 1963, B Corporation and C Corporation together will reinsure the United States risks described in section 953(a)(1)(A) of M Corporation. The amount of premiums received by B Corporation in respect of such United States risks is equal to one-third of the amount received by A Corporation in respect of the risks which are not United States risks described in section 953(a)(1)(A), and the amount of premiums received by C Corporation in respect of such United States risks is equal to two-thirds of the amount so received by A Corporation. The income of A Corporation derived in 1964 from reinsuring the risks of R Corporation is income derived from the insurance of United States risks described in section 953(a)(1)(B).

*Example 4.* Assume the same facts as in example 3, except that controlled foreign corporation D is also a wholly owned subsidiary of M Corporation and uses the calendar year as its taxable year. Assume further that M Corporation and R Corporation agree that in 1964 R Corporation will pay premiums of $300,000 to A Corporation and $700,000 to D Corporation to reinsure all risks of R Corporation which are not United States risks described in section 953(a)(1)(A), and that in 1963 M Corporation will pay premiums of $400,000 to B Corporation and $600,000 to C Corporation to reinsure all risks of M Corporation which are United States risks described in section 953(a)(1)(A). The income of A Corporation and D Corporation derived in 1964 from reinsuring the risks of R Corporation is income derived from the insurance of United States risks described in section 953(a)(1)(B).

*Example 5.* Controlled foreign corporation A is a wholly owned subsidiary of domestic insurance corporation M. Controlled foreign corporation B is a wholly owned subsidiary of domestic insurance corporation N. All corporations use the calendar year as the taxable year. As a result of an arrangement between M Corporation and N Corporation, in 1963 A Corporation reinsures all the United States risks described in section 953(a)(1)(A) of N Corporation, and B Corporation reinsures all the United States risks described in section 953(a)(1)(A) of M Corporation. The premiums and other consideration received by A Corporation and B Corporation in respect of such reinsurance are not substantially equal. The income of A Corporation and B Corporation in 1962 from reinsuring the risks of N Corporation and M Corporation, respectively, is income derived from the insurance of United States risks described in section 953(a)(1)(A) and is not income derived from the insurance or United States risks described in section 953(a)(1)(B).

*Example 6.* Assume the same facts as in example 5, except that B Corporation is not a controlled foreign corporation. The income of A Corporation in 1963 from reinsuring the risks of N Corporation is income derived from the insurance of United States risks described in section 953(a)(1)(A) and is not income derived from the insurance of United States risks described in section 953(a)(1)(B).

[T.D. 6781, 29 FR 18207, Dec. 23, 1964]

### § 1.953–4 Taxable income to which section 953 applies.

(a) *Taxable income defined*—(1) *Life insurance taxable income.* For a controlled foreign corporation which is engaged in the business of reinsuring or issuing insurance or annuity contracts and which, if it were a domestic corporation engaged only in such business, would be taxable as a life insurance company to which part I (sections 801 through 820) of subchapter L of the Code applies, the term ''taxable income'' means for purposes of paragraph (a) of § 1.953–1 the gain from operations, as defined in section 809(b) and as modified by this section, derived from, and attributable to, the insurance of United States risks. For purposes of determining such taxable income, the provisions of section 802(b) (relating to the definition of life insurance company taxable income) shall not apply. Determinations for purposes of this subparagraph shall be made without regard to section 501(a).

(2) *Mutual and other insurance taxable income.* For a controlled foreign corporation which is engaged in the business of reinsuring or issuing insurance or annuity contracts and which, if it were a domestic corporation engaged only in such business, would be taxable as a mutual insurance company to which part II (sections 821 through 826) of subchapter L of the Code applies or a mutual marine insurance or other insurance company to which part III (sections 831 and 832) of subchapter L of the Code applies, the term ''taxable income'' means for purposes of paragraph (a) of § 1.953–1 taxable income, as defined in section 832(a) and as modified by this section, derived from, and attributable to, the insurance of United States risks. Determinations for purposes of this subparagraph shall be made without regard to section 501(a).

(3) *Corporations not qualifying as insurance companies.* For special rules applicable under this section in the case of a controlled foreign corporation which, if it were a domestic corporation, would not qualify as an insurance company, see § 1.953–5.

(b) *Certain provisions inapplicable.* In determining taxable income under this section, the following provisions of subchapter L of the Code shall not apply:

(1) Section 809(d)(4), relating to the operations loss deduction;

(2) Section 809(d)(5), relating to certain nonparticipating contracts;

(3) Section 809(d)(6), relating to certain accident and health insurance and group life insurance;

(4) Section 809(d)(10), relating to small business deduction;

(5) Section 817(b), relating to gain on property held on December 31, 1958, and certain substituted property acquired after 1958; and

(6) Section 832(c)(5), relating to capital losses.

(c) *Computation of reserves required by law*—(1) *Law applicable in determining reserves.* The reserves which will be taken into account as reserves required by law under section 801(b)(2), both in determining for any taxable year whether a controlled foreign corporation is a controlled foreign corporation described in paragraph (a)(1) or (2) of this section and in determining taxable income of such corporation for the taxable year under paragraph (a) of this section, shall be the following reserves:

(i) *Reserves required by the law of a State.* The reserves which are required by the law of the State or States to which the insurance business of the controlled foreign corporation is subject, but only with respect to its United States business, if any, which is taxable under section 819(a).

(ii) *Reserves deemed to be required.* To the extent of such controlled foreign corporation's insurance business not taxable under section 819(a)—

*(a)* Except as provided in *(b)* of this subdivision (ii), the reserves which would result if such reserves were determined by applying the minimum standards of the law of New York as if such controlled foreign corporation were an insurance company transacting all of its insurance business (other than its United States business which is taxable under section 819(a)) for such taxable year in such State, and

*(b)* With respect to all risks covered by insurance ceded to such controlled foreign corporation by an insurance company to which apply the provisions of subchapter L of the Code (determined without regard to section 501(a)) and in respect of which an election is made by or on behalf of such controlled foreign corporation to determine its reserves in accordance with this subdivision (b), the amount of reserves against

such risks which would result if all of such reserves were determined by applying the law of the State, to which the risks in the hands of such insurance company are subject, as if such controlled foreign corporation were an insurance company engaged in reinsuring such risks in such State.

(2) *Rules of application.* For purposes of subparagraph (1) of this paragraph, the following rules shall apply:

(i) *Life insurance reserves computed on preliminary term basis.* For purposes of determining under paragraph (a) of this section the taxable income of a controlled foreign corporation, an election may be made by or on behalf of such corporation that the amount of reserves which are taken into account as life insurance reserves with respect to contracts for which reserves are computed on a preliminary term basis shall be determined as provided in section 818(c). This election shall apply, subject to section 818(c), to all life insurance reserves of the controlled foreign corporation, whether or not reserves applicable to the United States business taxable under section 819(a). However, reserves determined as provided in section 818(c) shall not be taken into account in determining whether a controlled foreign corporation is a controlled foreign corporation described in paragraph (a)(1) or (2) of this section.

(ii) *Actual reserves required. (a)* A controlled foreign corporation will be considered to have a reserve only to the extent the reserve has been actually held during the taxable year for which such reserve is claimed.

*(b)* For determining when reserves are required by the law of a State, see paragraph (b) of §1.801–5 of this chapter.

(iii) *Total reserves to be taken into account.* The total reserves of a controlled foreign corporation shall be taken into account in determining whether such corporation is a controlled foreign corporation described in paragraph (a)(1) or (2) of this section. Therefore, in making such determination, the reserves which, under subparagraph (1)(i) of this paragraph, are required by the law of any State shall be taken into account together with the reserves which, under subparagraph (1)(ii) of this paragraph, are deemed to be required. Moreover, reserves applicable to the reinsuring or the issuing of insurance or annuity contracts of both United States risks and foreign risks shall be taken into account. Finally, except as provided in subdivision (i) of this subparagraph, the reserves which are taken into account in determining whether a controlled foreign corporation is a controlled foreign corporation described in paragraph (a)(1) or (2) of this section shall be the same reserves which are taken into account in determining under paragraph (a) of this section the taxable income of such corporation.

(iv) *Method of comparing reserves when subject to more than one State.* If the insurance business of a controlled foreign corporation is subject to the law of more than one State, the amount of reserves taken into account under subparagraph (1)(i) of this paragraph shall be the amount of the highest aggregate reserve required by any State, determined as provided in paragraph (a) of §1.801–5 of this chapter.

(d) *Domestic corporation tax attributes.* In determining taxable income of a controlled foreign corporation under this section there shall be allowed, except as provided in section 953(b), this section, and §1.953–5, the exclusions and deductions from gross income which would be allowed if such corporation were a domestic insurance company engaged in the business of only reinsuring or issuing the insurance or annuity contracts which have been reinsured or issued by such corporation. For this purpose, the provisions of sections 819, 821(e), 822(e), 831(b), and 832(d), relating to foreign insurance companies, shall not apply; however, for the exclusion from the taxable income determined under section 953 of amounts derived from sources within the United States, see section 952(b) and paragraph (b) of §1.952–1. Furthermore, taxable income shall be determined under this section without regard to section 882 (b) and (c), relating to gross income and deductions of a foreign corporation, and without regard to whether the controlled foreign corporation is carrying on an insurance business in the United States. For other rules relating to the determination of gross income and taxable income of a foreign corporation for purposes of subpart F, see §1.952–2.

(e) *Limitation on certain amounts in respect of United States risks.* In determining taxable income under this section the following amounts shall not, in accordance with section 953(b)(4), be taken into account except to the extent they are attributable to the reinsuring or issuing of any insurance or annuity contract in connection with United States risks described in §1.953–2 or §1.953–3:

(1) The amount of premiums determined under section 809(c)(1);

(2) The net decrease in reserves determined under section 809(c)(2);

(3) The net increase in reserves determined under section 809(d)(2); and

(4) The premiums earned on insurance contracts during the taxable year, as determined under section 832(b)(4). For the allocation and apportionment of such amounts to income from the insurance of United States risks, see paragraphs (f) and (g) of this section.

(f) *Items allocated or apportioned*—(1) *Rules of allocation or apportionment.* In determining taxable income under this section, first determine all items of income, expenses, losses, and other deductions which directly relate to the premiums received for the reinsuring or the issuing of any insurance or annuity contract in connection with United States risks, as defined in §§1.953–2 and 1.953–3, and allocate such items to the insurance of United States risks. For example, the deductions allowed by section 809(d)(1), relating to death benefits, section 809(d)(3), relating to dividends to policyholders, and section 809(d)(7), relating to the assumption by another person of liabilities under insurance contracts, shall be allocated to the insurance of United States risks to the extent they relate directly to the premiums received for reinsuring or issuing insurance or annuity contracts in connection with United States risks. Next, determine all items of income, expenses, losses, and other deductions which directly relate to the premiums received for the reinsuring or the issuing of any insurance or annuity contract in connection with foreign risks and allocate such items to the reinsuring of foreign risks. Finally, determine all items of income, expenses, losses, and other deductions which relate to the premiums received for the reinsuring or the issuing of any insurance or annuity contract in connection with both United States risks and foreign risks, and, except as provided in paragraph (g) of this section, apportion such items between the insurance of United States risks and the insurance of foreign risks in the manner prescribed in subparagraph (2) or (3) of this paragraph, as the case may be. As used in this section, the term ''foreign risks'' means risks which are not United States risks as defined in §1.953–2 or §1.953–3.

(2) *Method of apportionment in determination of life insurance taxable income*—(i) *Investment yield and net long-term capital gain.* Unless they can be allocated to the insurance of United States risks, as provided in subparagraph (1) of this paragraph, in determining a controlled foreign corporation's taxable income for any taxable year under paragraph (a)(1) of this section—

*(a)* The investment yield under section 804(c),

*(b)* The amount (if any) under section 809(b)(1)(B) by which the net long-term capital gain exceeds the net short-term capital loss, and

*(c)* Those deductions allowed under section 809(d)(8), (9), and (12) which relate to gross investment income shall be apportioned to the reinsuring and issuing of insurance and annuity contracts in connection with United States risks in an amount which bears the same ratio to each of such amounts of investment yield, excess gain, and deductions as the sum of the mean of each of the items described in section 810(c) at the beginning and end of the taxable year attributable to reinsuring and issuing any insurance and annuity contracts in connection with United States risks bears to the sum of the mean of each of the items described in section 810(c) at the beginning and end of the taxable year attributable to reinsuring and issuing all insurance and annuity contracts. Thus, for example, if the ratio which the sum of the mean of each of the items described in section 810(c) at the beginning and end of

the taxable year attributable to reinsuring and issuing insurance and annuity contracts in connection with United States risks bears to the sum of the mean of each of the items described in section 810(c) at the beginning and end of the taxable year attributable to reinsuring and issuing all insurance and annuity contracts in one to three, then, unless an allocation to the insurance of United States risks can be made as provided in subparagraph (1) of this paragraph, one-third of each of such amounts of investment yield, excess gain, and deductions shall be apportioned to the reinsuring and issuing of insurance and annuity contracts in connection with United States risks, and two-thirds of each of such amounts shall be apportioned to the reinsuring and issuing of insurance and annuity contracts in connection with foreign risks.

(ii) *Other income and deductions—(a) Amount taken into account.* In determining a controlled foreign corporation's taxable income for any taxable year under paragraph (a)(1) of this section, all items of income taken into account under section 809(c)(3), relating to other amounts of gross income, and the other deductions allowed under section 809(d)(12) to the extent that such other deductions do not relate to gross investment income shall be apportioned to the reinsuring and issuing of insurance and annuity contracts in connection with United States risks in an amount which bears the same ratio to each of such items of income or of such other deductions as the numerator determined under *(b)* of this subdivision bears to the denominator determined under *(c)* of this subdivision.

*(b) Numerator.* The numerator used for purposes of the apportionment under *(a)* of this subdivision shall be an amount which equals the amount determined under *(c)* of this subdivision, but only to the extent that the amount so determined is taken into account under paragraph (e) of this section in determining taxable income for the taxable year.

*(c) Denominator.* The denominator used for purposes of the apportionment under *(a)* of this subdivision shall be an amount which equals—

*(1)* The amount of premiums determined under section 809(c)(1) for the taxable year, plus

*(2)* The net decrease in reserves determined under section 809(c)(2) for such year, minus

*(3)* The net increase in reserves determined under section 809(d)(2) for such year.

(iii) *Reserves used in apportionment formula.* The rules for determining which reserves are taken into account in determining the taxable income of a controlled foreign corporation under paragraph (a) of this section shall also apply under subdivision (ii) *(b)* and *(c)* of this subparagraph in determining the net decrease in reserves under section 809(c)(2) or the net increase in reserves under section 809(d)(2). See paragraph (c) of this section.

(3) *Method of apportionment in determination of mutual and other insurance income*—(i) *In general.* In determining a controlled foreign corporation's taxable income for any taxable year under paragraph (a)(2) of this section, any item which is required to be apportioned under subparagraph (1) of this paragraph shall be apportioned to the reinsuring and issuing of insurance and annuity contracts in connection with United States risks in an amount which bears the same ratio to the total amount of such item as the amount of premiums earned on insurance contracts during the taxable year which is required to be taken into account by such corporation under paragraph (e)(4) of this section in determining such taxable income bears to the total amount of all its premiums earned (as determined under section 832(b)(4)) on insurance contracts during the taxable year.

(ii) *Reserves used in apportionment formula.* The principles of subparagraph (2)(iii) of this paragraph shall apply in determining the reserves included in premiums earned on insurance contracts during the taxable year for purposes of subdivision (i) of this subparagraph.

(g) *Separate accounting.* The methods of apportionment prescribed in subparagraphs (2) and (3) of paragraph (f) of this section for determining taxable income under this section shall not apply if the district director determines that the controlled foreign corporation, in good faith and unaffected by considerations of tax liability, regularly employs in its books of account a detailed segregation of receipts, expenditures, assets, liabilities, and net worth which clearly reflects the income derived from the reinsuring or issuing of insurance or annuity contracts in connection with United States risks. The district director, in making such determination, shall give effect to any foreign law, satisfactory evidence of which is presented by the United States shareholder to the district, director, which requires a reasonable segregation of those items of income, expense, losses, and other deductions which relate to determining such taxable income.

(h) *Illustration.* The application of paragraphs (e) and (f) of this section may be illustrated by the following example:

*Example.* Controlled foreign corporation A, incorporated under, and engaged in an insurance business subject to, the laws of foreign country X, is a wholly owned subsidiary of domestic corporation M. Both corporations use the calendar year as the taxable year. Corporation M is a life insurance company as defined in section 801(a); A Corporation would, if it were a domestic corporation, be taxable under part I of subchapter L of the Code. In 1963, A Corporation derives income from the insurance of United States risks as a result of reinsuring the life insurance policies issued by M Corporation on lives of residents of the United States. In 1963, A Corporation also issues policies of life insurance on individuals who are not residents of the United States, but its premiums from the reinsuring of United States risks exceed he 5-percent minimum premium requirement prescribed in paragraph (b) of §1.953–1. Based upon the facts set forth in paragraph (a) of this example, A Corporation for 1963 has taxable income under this section of $40,200, which is attributable to the reinsuring of life insurance contracts in connection with United States risks, determined in the manner provided in paragraphs (b), (c), and (d) of this example.

(a) A summary of the entire operations of A Corporation for 1963, determined under this section as though such corporation were a domestic life insurance company but without applying paragraph (f) of this section, is as follows:

| Item | Attributable to all insurance | Attributable to reinsuring U.S. risks | Attributable to insuring foreign risks |
|---|---|---|---|
| Investment Income: | | | |
| (1) Investment yield under section 804(c) | $90,000 | Unallocable | Unallocable |
| (2) Sum of the mean of each of the items described in section 810(c) at beginning and end of 1963 | 2,500,000 | $1,000,000 | $1,500,000 |
| (3) Required interest under section 809(a)(2) | 60,000 | 25,000 | 35,000 |
| (4) Deductions allowed under section 809(d)(8), (9), and (12) which relate to gross investment income | 10,000 | Unallocable | Unallocable |
| Underwriting Income: | | | |
| (5) Premiums under section 809(c)(1) | 600,000 | 200,000 | 400,000 |
| (6) Net decrease in reserves under section 809(c)(2) | 10,000 | None | 10,000 |
| (7) Net increase in reserves under section 809(d)(2) | 40,000 | 40,000 | None |
| (8) Deductions allowed under section 809(d) (other than deduction allowed under section 809(d)(2) and other than those deductions allowed under section 809(d)(8), (9), and (12) which relate to gross investment income): | | | |
| (i) Allocable | 330,000 | 110,000 | 220,000 |
| (ii) Unallocable | 60,000 | Unallocable | Unallocable |

(b) The unallocable investment yield ($90,000) under paragraph (a)(1) of this example and the unallocable deductions ($10,000) under paragraph (a)(4) relating to gross investment income are apportioned to the reinsuring of United States risks under paragraph (f)(1)(i) of this section in the amounts of $36,000, and $4,000, respectively, determined as follows:

| | |
|---|---|
| (1) Sum of the mean of each of the items described in section 810(c) at beginning and end of 1963, attributable to reinsuring U.S. risks (paragraph (a)(2)) | $1,000,000 |
| (2) Sum of the mean of each of the items described in section 810(c) at beginning and end of 1963, attributable to all insurance (paragraph (a)(2)) | $2,500,000 |
| (3) Ratio of amount under subparagraph (1) to amount under subparagraph (2) ($1,000,000/ $2,500,000) | 40% |
| (4) Amount of investment yield attributable to reinsuring of U.S. risks (40% of $90,000) | $36,000 |
| (5) Amount of such deductions attributable to reinsuring of U.S. risks (40% of $10,000) | $4,000 |

(c) The unallocable deductions ($60,000) under paragraph (a)(8)(ii) of this example which do not relate to gross investment income are apportioned to the reinsuring of United States risks under paragraph (f)(2)(ii) of this section in the amount of $16,800, determined as follows:

(1) The numerator determined under paragraph (f)(2)(ii)*(b)* of this section is $160,000, determined as follows:

| | | |
|---|---|---|
| (i) Premiums under section 809(c)(1) attributable to reinsuring U.S. risks (paragraph (a)(5)) | $200,000 | |
| (ii) Plus: Net decrease in reserves under section 809(c)(2) attributable to reinsuring U.S. risks (paragraph (a)(6)) | | $200,000 |
| (iii) Less: Net increase in reserves under section 809(d)(2) attributable to reinsuring U.S. risks (paragraph (a)(7)) | | $40,000 |
| | | $160,000 |

(2) The denominator determined under paragraph (f)(2)(ii)(c) of this section is $570,000, determined as follows:

| | | |
|---|---|---|
| (i) Premiums under section 809(c)(1) attributable to all insurance (paragraph (a)(5)) | $600,000 | |
| (ii) Plus: Net decrease in reserves under section 809(c)(2) attributable to all insurance (paragraph (a)(6)) | 10,000 | |
| | | $610,000 |
| (iii) Less: Net increase in reserves under section 809(d)(2) attributable to all insurance (paragraph (a)(7)) | | 40,000 |
| | | $570,000 |

(3) Ratio which the numerator determined under subparagraph (1) bears to the denominator determined under subparagraph (2) ($160,000/$570,000)—28%.

(4) Amount of deductions attributable to reinsuring of U.S. risks (28% of $60,000)—$16,800.

(d) The taxable income of A Corporation for 1963 which constitutes its income derived from the insurance of United States risks for purposes of paragraph (a) of §1.953–1 is $40,200, determined as follows:

| | Attributable to all insurance | | Attributable to reinsuring U.S. risks | | Attributable to insuring foreign risks | |
|---|---|---|---|---|---|---|
| Item: | | | | | | |
| (1) Investment yield under section 804(c) (paragraph (a)(1), unallocable but as apportioned under paragraph (b)(4) | $90,000 | | $36,000 | | $54,000 | |
| (2) Less: Required interest under section 809(a)(2) (paragraph (a)(3)) | 60,000 | | 25,000 | | 35,000 | |
| (3) Life insurance company's share of investment yield under section 809(b)(1)(A) | ............... | $30,000 | | $11,000 | | $19,000 |
| Plus sum of: | | | | | | |
| (4) Premiums under section 809(c)(1) (paragraph (a)(5)) | 600,000 | | 200,000 | | 400,000 | |
| (5) Net decrease in reserves under section 809(c)(2) (paragraph (a)(6)) | 10,000 | 610,000 | None | 200,000 | 10,000 | 410,000 |
| Sum determined under section 809(b)(1) | ............... | 640,000 | | 211,000 | | 429,000 |
| Less sum of: | | | | | | |
| (6) Net increase in reserves under section 809(d)(2) (paragraph (a)(7)) | 40,000 | | 40,000 | | None | |
| (7) Deductions allowed under section 809(d)(8), (9), and (12) which relate to gross investment income (paragraph (a)(4)), unallocable but as apportioned under paragraph (b)(5) | 10,000 | | 4,000 | | 6,000 | |
| (8) Deductions allowed under section 809(d) (other than deduction allowed under section 809(d)(2) and other than those deductions allowed under section 809(d)(8), (9), and (12) which relate to gross investment income) (paragraph (a)(8)):. | | | | | | |
| (i) Allocable | 330,000 | | 110,000 | | 220,000 | |
| (ii) Unallocable, but as apportioned under paragraph (c)(4) | 60,000 | 440,000 | 16,800 | 170,800 | 43,200 | 269,200 |
| Gain from operations | ............... | 200,000 | | 40,200 | | 159,800 |

[T.D. 6781, 29 FR 18207, Dec. 23, 1964]

### § 1.953–5 Corporations not qualifying as insurance companies.

(a) *In general.* A controlled foreign corporation is not excluded from the application of paragraph (a) of § 1.953–1 because such corporation, if it were a domestic corporation, would not be taxable as an insurance company to which subchapter L of the Code applies. Thus, if a controlled foreign corporation reinsures or issues insurance or annuity contracts in connection with United States risks, as defined in § 1.953–2 or § 1.953–3, and satisfies the 5-percent minimum premium requirement prescribed in paragraph (b) of § 1.953–1, such corporation may derive income from the insurance of United States risks even though the primary and predominant business activity of such corporation during the taxable year is not the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies.

(b) *Income from insurance of United States risks by noninsurance company.* For purposes of paragraph (a) of § 1.953–1, the taxable income derived from the reinsuring or the issuing of any insurance or annuity contract in connection with United States risks by a controlled foreign corporation which, if it were a domestic corporation, would not be taxable as an insurance company to which subchapter L of the Code applies shall be determined under § 1.953–4, subject to, and to the extent not inconsistent with, the special rules prescribed in paragraph (c) or (d) of this section, whichever applies.

(c) *Special rules in determining taxable income*—(1) *In general.* The rules prescribed in this paragraph apply in order to exclude from the determination under § 1.953–4 of the taxable income described in paragraph (b) of this section those items of the controlled foreign corporation's gross income and deductions which are not attributable to the reinsuring and issuing of insurance and annuity contracts.

(2) *Life insurance taxable income*—(i) *Amount of investment yield taken into account.* For purposes of determining the taxable income of a controlled foreign corporation which would not be taxable as an insurance company to which subchapter L of the Code applies if it were a domestic corporation but would be taxable as an insurance company to which part I of such subchapter applies if it were a domestic insurance company engaged in the business of only reinsuring or issuing the insurance or annuity contracts which have been reinsured or issued by such corporation, the investment yield under section 804(c), the amount (if any) by which the net long-term capital gain exceeds the net short-term capital loss, and all items of income taken into account under section 809(c)(3) shall be taken into account, subject to the provisions of paragraphs (e) and (f) of § 1.953–4, in an amount which bears the same ratio to each of such amounts of investment yield, excess gain, and income items, as the case may be, as the numerator determined under subdivision (ii) of this subparagraph bears to the denominator determined under subdivision (iii) of this subparagraph.

(ii) *Numerator.* The numerator used for purposes of the apportionment under subdivision (i) of this subparagraph shall be the sum of—

*(a)* The mean of each of the items described in section 810(c) at the beginning and end of the taxable year, determined in accordance with the rules prescribed in paragraph (c) of § 1.953–4 for purposes of determining taxable income of a controlled foreign corporation under paragraph (a) of § 1.953–4,

*(b)* The mean of other liabilities at the beginning and end of the taxable year which are attributable to the reinsuring and issuing of insurance and annuity contracts, and

*(c)* The mean of the earnings and profits accumulated by the controlled foreign corporation at the beginning and end of the taxable year (determined without diminution by reason of any distributions made during the taxable year) which are attributable to the reinsuring and issuing of insurance and annuity contracts.

(iii) *Denominator.* The denominator used for purposes of the apportionment under subdivision (i) of this subparagraph shall be the mean of the value of the total assets held by the controlled foreign corporation at the beginning