

§ 1.962-2

26 CFR Ch. I (4-1-01 Edition)

Gross-up under sections 960(a)(1) and 78 (\$90,000/\$300,000×\$200,000)	60,000	
Income under section 951(a) from N Corporation	600,000	
Gross-up under sections 960(a)(1) and 78 (\$600,000/\$800,000×\$400,000)	300,000	
Taxable income under section 11	1,050,000	
Normal tax (0.22×\$1,050,000)		\$231,000
Surtax exemption (\$90,000+\$600,000)/[0.60×\$300,000+(0.80×\$800,000)]×\$25,000	21,036	
Subject to surtax under section 11 (\$1,050,000 – \$21,036)	1,028,964	
Surtax (0.28×\$1,028,964)		288,110
Tentative U.S. tax		519,110
Foreign tax credit (\$60,000+\$300,000)	360,000	
Total U.S. tax payable on amounts included under section 951(a)		\$159,110
Tax with respect to other income:		
Gross income		200,600
Less:		
Personal exemption	600	
Deductions	100,000	
	100,600	
Taxable income		100,000
Tax with respect to such other taxable income		59,340
Total tax (\$159,110+\$59,340)		218,450

[T.D. 6858, 30 FR 13695, Oct. 28, 1965, as amended by T.D. 7413, 41 FR 12640, Mar. 26, 1976]

§ 1.962-2 Election of limitation of tax for individuals.

(a) *Who may elect.* The election under section 962 may be made only by a United States shareholder who is an individual (including a trust or estate).

(b) *Time and manner of making election.* Except as provided in § 1.962-4, a United States shareholder shall make an election under this section by filing a statement to such effect with his return for the taxable year with respect to which the election is made. The statement shall include the following information:

(1) The name, address, and taxable year of each controlled foreign corporation with respect to which the electing shareholder is a United States shareholder and of all other corporations, partnerships, trusts, or estates in any applicable chain of ownership described in section 958(a);

(2) The amounts, on a corporation-by-corporation basis, which are included in such shareholder's gross income for his taxable year under section 951(a);

(3) Such shareholder's pro rata share of the earnings and profits (determined under § 1.964-1) of each such controlled foreign corporation with respect to which such shareholder includes any

amount in gross income for his taxable year under section 951(a) and the foreign income, war profits, excess profits, and similar taxes paid on or with respect to such earnings and profits;

(4) The amount of distributions received by such shareholder during his taxable year from each controlled foreign corporation referred to in subparagraph (1) of this paragraph from excludable section 962 earnings and profits (as defined in paragraph (b)(1)(i) of § 1.962-3), from taxable section 962 earnings and profits (as defined in paragraph (b)(1)(ii) of § 1.962-3), and from earnings and profits other than section 962 earnings and profits, showing the source of such amounts by taxable year; and

(5) Such further information as the Commissioner may prescribe by forms and accompanying instructions relating to such election.

(c) *Effect of election—(1) In general.* Except as provided in subparagraph (2) of this paragraph and § 1.962-4, an election under this section by a United States shareholder for a taxable year shall be applicable to all controlled foreign corporations with respect to which such shareholder includes any amount in gross income for his taxable year under section 951(a) and shall be

binding for the taxable year for which such election is made.

(2) *Revocation.* Upon application by the United States shareholder, an election made under this section may, subject to the approval of the Commissioner, be revoked. Approval will not be granted unless a material and substantial change in circumstances occurs which could not have been anticipated when the election was made. The application for consent to revocation shall be made by the United States shareholder's mailing a letter for such purpose to Commissioner of Internal Revenue, Attention: T:R, Washington, DC 20224, containing a statement of the facts upon which such shareholder relies in requesting such consent.

[T.D. 6858, 30 FR 13696, Oct. 28, 1965]

**§ 1.962-3 Treatment of actual distributions.**

(a) *In general.* Section 962(d) provides that the earnings and profits of a foreign corporation attributable to amounts which are, or have been, included in the gross income of an individual United States shareholder under section 951(a) by reason of such shareholder's ownership (within the meaning of section 958(a)) of stock in such corporation and with respect to which amounts an election under § 1.962-2 applies or applied shall, when such earnings and profits are distributed to such shareholder with respect to such stock, notwithstanding the provisions of section 959(a)(1), be included in his gross income to the extent that such earnings and profits exceed the amount of income tax paid by such shareholder under this chapter on the amounts to which such election applies or applied. Thus, when such shareholder receives an actual distribution of section 962 earnings and profits (as defined in paragraph (b)(1) of this section) from a foreign corporation, only the excludable section 962 earnings and profits (as defined in paragraph (b)(1)(i) of this section) may be excluded from his gross income.

(b) *Rules of application.* For purposes of this section—

(1) *Section 962 earnings and profits defined.* With respect to an individual United States shareholder, the term "section 962 earnings and profits"

means the earnings and profits of a foreign corporation referred to in paragraph (a) of this section. Such earnings and profits include—

(i) *Excludable section 962 earnings and profits.* Excludable section 962 earnings and profits which are the amount of the section 962 earnings and profits equal to the amount of income tax paid under this chapter by such shareholder on the amounts included in his gross income under section 951(a); and

(ii) *Taxable section 962 earnings and profits.* Taxable section 962 earnings and profits which are the excess of section 962 earnings and profits over the amount described in subdivision (i) of this subparagraph.

(2) *Determinations made separately for each taxable year.* If section 962 earnings and profits attributable to more than one taxable year are distributed by a foreign corporation the determinations under this section shall be made separately with respect to each such taxable year.

(3) *Source of distributions—(i) In general.* Except as otherwise provided in this subparagraph, the provisions of paragraphs (a) through (d) of § 1.959-3 shall apply in determining the source of distributions of earnings and profits by a foreign corporation.

(ii) *Treatment of section 962 earnings and profits under § 1.959-3.* For purposes of a section 959(c) amount and year classification under paragraph (b) of § 1.959-3, a distribution of earnings and profits by a foreign corporation shall be first allocated to earnings and profits other than section 962 earnings and profits (as defined in subparagraph (1) of this paragraph) and then to section 962 earnings and profits. Thus distributions shall be considered first attributable to amounts described in paragraph (b)(1) of § 1.959-3 which are not section 962 earnings and profits and then to amounts described in such paragraph (b)(1) which are section 962 earnings and profits (first for the current taxable year and then for prior taxable years beginning with the most recent prior taxable year), secondly to amounts described in paragraph (b)(2) of § 1.959-3 which are not section 962 earnings and profits and then to amounts described in such paragraph (b)(2) which are section 962 earnings