

## Internal Revenue Service, Treasury

## § 1.904-0

subject to the otherwise generally imposed income tax (90u, *i.e.*, 150u-60u).

(c) *Effective date.* The effective date of this section is as provided in §1.901-2(h).

[T.D. 7918, 48 FR 46295, Oct. 12, 1983; 48 FR 52033, Nov. 16, 1983]

### § 1.904-0 Outline of regulation provisions for section 904.

This section lists the regulations under section 904-0 of the Internal Revenue Code of 1986.

#### § 1.904-1 Limitation on credit for foreign taxes.

- (a) Per-country limitation.
  - (1) General.
  - (2) Illustration of principles.
- (b) Overall limitation.
  - (1) General.
  - (2) Illustration of principles.
- (c) Special computation of taxable income.
  - (d) Election of overall limitation.
    - (1) In general.
    - (i) Manner of making election.
    - (ii) Revocation for first taxable year beginning after December 31, 1969.
    - (2) Method of making the initial election.
    - (3) Method of revoking an election and making a new election.
  - (e) Joint return.
    - (1) General.
    - (2) Electing the overall limitation.

#### § 1.904-2 Carryback and carryover of unused foreign tax.

- (a) Credit for foreign tax carryback or carryover.
  - (b) Years to which carried.
    - (1) General.
    - (2) Definitions.
  - (3) Taxable years beginning before January 1, 1958.
  - (c) Tax deemed paid or accrued.
    - (1) Unused foreign tax for per-country limitation year.
    - (2) Unused foreign tax for overall limitation year.
    - (3) Unused foreign tax with respect to foreign mineral income.
  - (d) Determination of excess limitation for certain years.
  - (e) Periods of less than 12 months.
  - (f) Statement with tax return.
  - (g) Illustration of carrybacks and carryovers.

#### § 1.904-3 Carryback and carryover of unused foreign tax by husband and wife.

- (a) In general.
- (b) Joint unused foreign tax and joint excess limitation.
- (c) Continuous use of joint return.

- (d) From separate to joint return.
- (e) Amounts carried from or through a joint return year to or through a separate return year.
- (f) Allocation of unused foreign tax and excess limitation.
  - (1) Limitation.
    - (i) Per-country limitation.
    - (ii) Overall limitation.
  - (2) Unused foreign tax.
    - (i) Per-country limitation.
    - (ii) Overall limitation.
  - (3) Excess limitation.
    - (i) Per-country limitation taxpayer.
    - (ii) Overall limitation.
  - (4) Excess limitation to be applied.
  - (5) Reduction of excess limitation.
  - (6) Spouses using different limitations.
  - (g) Illustrations.

#### § 1.904-4 Separate application of section 904 with respect to certain categories of income.

- (a) In general.
- (b) Passive income.
  - (1) In general.
    - (i) Rule.
    - (ii) Example.
  - (2) Active rents or royalties.
    - (i) In general.
    - (ii) Exception for certain rents and royalties.
      - (iii) Unrelated person.
      - (iv) Example.
  - (c) High-taxed income.
    - (1) In general.
    - (2) Grouping of items of income in order to determine whether passive income is high-taxed income.
      - (i) Effective dates.
        - (A) In general.
        - (B) Application to prior periods.
      - (ii) Grouping rules.
        - (A) Initial allocation and apportionment of deductions and taxes.
        - (B) Reallocation of loss groups.
      - (3) Amounts received or accrued by United States persons.
        - (4) Income of controlled foreign corporations and foreign QBUs.
        - (5) Special rules.
          - (i) Certain rents and royalties.
          - (ii) Treatment of partnership income.
          - (iii) Currency gain or loss.
          - (iv) Certain passive dividends.
        - (v) Coordination with section 954(b)(4).
      - (6) Application of this paragraph to additional taxes paid or deemed paid in the year of receipt of previously taxed income.
        - (i) Determination made in year of inclusion.
          - (ii) Exception.
          - (iii) Allocation of foreign taxes imposed on distributions of previously taxed income.
          - (iv) Increase in taxes paid by successors.
            - (A) General rule.
            - (B) Exception for U.S. shareholders not entitled to look-through.

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(7) Application of this paragraph to certain reductions of tax on distributions of income.

(i) In general.  
(ii) Allocation of reductions of foreign tax.

(iii) Interaction with section 954(b)(4).  
(8) Examples.

(d) High withholding tax interest.  
(e) Financial services income.

(1) In general.  
(2) Active financing income.

(i) Income included.  
(3) Financial services entities.

(i) In general.  
(ii) Special rule for affiliated groups.

(iii) Treatment of partnerships and other pass-through entities.

(A) Rule.  
(B) Examples.

(iv) Examples.  
(4) Definition of incidental income.

(i) In general.  
(A) Rule.

(B) Examples.  
(ii) Income that is not incidental income.

(5) Exceptions.  
(f) Shipping income.

(g) Non-controlled section 902 corporations.

(1) Definition.  
(2) Treatment of dividends for each separate noncontrolled section 902 corporation.

(i) In general.  
(ii) Special rule for dividends received by a controlled foreign corporation.

(iii) Special rule for high withholding tax interest.

(iv) Treatment of inclusions under section 1293.

(v) Examples.  
(3) Special rule for dividends paid by a controlled foreign corporation.

(i) Distributions out of earnings and profits accumulated when the distributing corporation was not a controlled foreign corporation.

(A) General rule.  
(B) Ordering rule.

(C) Effect of intervening noncontrolled status.  
(D) Examples.

(ii) Pre-August 6, 1997, dividend distributions out of earnings and profits accumulated before a more-than-90-percent United States shareholder became a United States shareholder.

(A) General rule.  
(B) Exception for intra-group acquisitions.

(C) Ordering rule.  
(D) Distributions after August 5, 1997.

(E) Examples.  
(iii) Treatment of earnings and profits for transition year.

(iv) Definitions.  
(v) Effective date.

(h) Export financing interest.

(1) Definitions.

(i) Export financing.

(ii) Fair market value.

(iii) Related person.

(2) Treatment of export financing interest.

(3) Exceptions.

(i) Export financing interest that is high withholding tax interest.

(ii) Export financing interest that is also related person factoring income.

(iii) Export financing interest that is related person factoring income and is received or accrued by a financial services entity.

(iv) Export financing interest that is related person factoring income and high withholding tax interest.

(4) Examples.

(5) Income eligible for section 864(d)(7) exception (same country exception) from related person factoring treatment.

(i) Income other than interest.  
(ii) Interest income.

(iii) Examples.

(i) Interaction of section 907(c) and income described in this section.

(j) Special rule for certain currency gains and losses.

(k) Special rule for alternative minimum tax foreign tax credit.

(1) Priority rules.

(1) In general.

(2) Examples.

*§ 1.904-5 Look-through rules as applied to controlled foreign corporations and other entities.*

(a) Definitions.

(b) In general.

(c) Rules for specific types of inclusions and payments.

(1) Subpart F inclusions.

(i) Rule.

(ii) Examples.

(2) Interest.

(i) In general.

(ii) Allocating and apportioning expenses including interest paid to a related person.

(iii) Definitions.

(A) Value of assets and reduction in value of assets and gross income.

(B) Related person debt allocated to passive assets.

(iv) Examples.

(3) Rents and royalties.

(4) Dividends.

(i) Look-through rule.

(ii) Special rule for dividends attributable to certain loans.

(iii) Examples.

(d) Effect of exclusions from Subpart F income.

(1) De minimis amount of Subpart F income.

(2) Exception for certain income subject to high foreign tax.

(3) Examples.

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(e) Treatment of Subpart F income in excess of 70 percent of gross income.

(1) Rule.

(2) Example.

(f) Modifications of look-through rules for certain income.

(1) High withholding tax interest.

(2) Dividends from a non-controlled section 902 corporation.

(i) Rule.

(ii) Example.

(3) Distributions from a FSC.

(4) Example.

(g) Application of the look-through rules to certain domestic corporations.

(h) Application of the look-through rules to partnerships and other pass-through entities.

(1) General rule.

(2) Exception for certain partnership interests.

(i) Rule.

(ii) Exceptions.

(3) Income from the sale of a partnership interest.

(4) Value of a partnership interest.

(i) Application of look-through rules to related entities.

(1) In general.

(2) Exception for distributive shares of partnership income.

(3) Special rule for dividends.

(4) Examples.

(j) Look-through rules applied to passive foreign investment company inclusions.

(k) Ordering rules.

(1) In general.

(2) Specific rules.

(1) Examples.

(m) Application of section 904(g).

(1) In general.

(2) Treatment of interest payments.

(3) Examples.

(4) Treatment of dividend payments.

(i) Rule.

(ii) Determination of earnings and profits from United States sources.

(iii) Example.

(5) Treatment of Subpart F inclusions.

(i) Rule.

(ii) Example.

(6) Treatment of section 78 amount.

(7) Coordination with treaties.

(i) Rule.

(ii) Example.

(n) Order of application of sections 904 (d) and (g).

(o) Effective date.

### *§ 1.904-6 Allocation and apportionment of taxes.*

(a) Allocation and apportionment of taxes to a separate category or categories of income.

(1) Allocation of taxes to a separate category or categories of income.

(i) Taxes related to a separate category of income.

(ii) Apportionment of taxes related to more than one separate category.

(iii) Apportionment of taxes for purposes of applying the high tax income test.

(iv) Special rule for base and timing differences.

(2) Treatment of certain dividends from noncontrolled section 902 corporations.

(b) Application of paragraph (a) to sections 902 and 960.

(1) Determination of foreign taxes deemed paid.

(2) Distributions received from foreign corporations that are excluded from gross income under section 959(b).

(3) Application of section 78.

(4) Increase in limitation.

(c) Examples.

### *§ 1.904-7 Transition rules.*

(a) Characterization of distributions and section 951(a)(1)(A) (ii) and (iii) and (B) inclusions of earnings of a controlled foreign corporation accumulated in taxable years beginning before January 1, 1987, during taxable years of both the payor controlled foreign corporation and the recipient which begin after December 31, 1986.

(1) Distributions and section 951(a)(1)(A) (ii) and (iii) and (B) inclusions.

(2) Limitation on establishing the character of earnings and profits.

(b) Application of look-through rules to distributions (including deemed distributions) and payments by an entity to a recipient when one's taxable year begins before January 1, 1987 and the other's taxable year begins after December 31, 1986.

(1) In general.

(2) Payor of interest, rents, or royalties is subject to the Act and recipient is not subject to the Act.

(3) Recipient of interest, rents, or royalties is subject to the Act and payor is not subject to the Act.

(4) Recipient of dividends and subpart F inclusions is subject to the Act and payor is not subject to the Act.

(5) Examples.

(c) Installment sales.

(d) Special effective date for high withholding tax interest earned by persons with respect to qualified loans described in section 1201(e)(2) of the Act.

(e) Treatment of certain recapture income.

### *§ 1.904(b)-1 Treatment of capital gains for corporations.*

(a) In general.

(1) Inclusion in foreign source taxable income.

(2) Inclusion in entire taxable income.

(3) Treatment of capital losses.

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- (b) Definitions.
- (1) Capital gain net income.
- (2) Foreign source capital gain net income.
- (3) Net capital gain.
- (4) Foreign source net capital gain.
- (5) Rate differential portion.
- (6) Net capital loss.
- (7) Allocation and apportionment.
- (8) Computation of net section 1231 gain.
- (c) Illustrations.

*§ 1.904(b)-2 Treatment of capital gains for other taxpayers.*

- (a) In general.
- (1) Inclusion in foreign source taxable income.
- (2) Inclusion in entire taxable income.
- (3) Treatment of capital losses.
- (b) Definition of net capital loss.
- (c) Illustrations.

*§ 1.904(b)-3 Sale of personal property.*

- (a) General rule.
- (b) Special rules.
- (c) Exception.
- (d) Application of source rules.
- (e) Gain from liquidation of certain foreign corporations.
- (f) Residence defined.
- (g) Tax rate applicable to gain.
- (h) Country in which gross income derived.

*§ 1.904(b)-4 Effective date.*

*§ 1.904(f)-1 Overall foreign loss and the overall foreign loss account.*

- (a) Overview of regulations.
- (b) Overall foreign loss accounts.
- (c) Determination of a taxpayer's overall foreign loss.
- (1) Overall foreign loss defined.
- (2) Separate limitation defined.
- (3) Method of allocation and apportionment of deductions.
- (d) Additions to the overall foreign loss account.
- (1) General rule.
- (2) Overall foreign net capital loss.
- (3) Overall foreign losses of another taxpayer.
- (4) Additions to overall foreign loss account created by loss carryovers.
- (5) Adjustments.
- (i) Adjustment due to reduction in foreign source income under section 904(b).
- (ii) Adjustment to account for rate differential between ordinary income rate and capital gain rate.
- (e) Reductions of overall foreign loss accounts.
- (1) Pre-recapture reduction for amounts allocated to other taxpayers.
- (2) Reduction for amounts recaptured.
- (f) Illustrations.

*§ 1.904(f)-2 Recapture of overall foreign losses.*

- (a) In general.
- (b) Determination of taxable income from sources without the United States for purposes of recapture.
- (1) In general.
- (c) Section 904(f)(1) recapture.
- (1) In general.
- (2) Election to recapture more of the overall foreign loss than is required under paragraph (c)(1).
- (3) Special rule for recapture of losses incurred prior to section 936 election.
- (4) Recapture of pre-1983 overall foreign losses determined on a combined basis.
- (5) Illustrations.
- (d) Recapture of overall foreign losses from dispositions under section 904(f)(3).
- (1) In general.
- (2) Treatment of net capital gain.
- (3) Dispositions where gain is recognized irrespective of section 904(f)(3).
- (4) Dispositions in which gain would not otherwise be recognized.
- (i) Recognition of gain to the extent of the overall foreign loss account.
- (ii) Basis adjustment.
- (iii) Recapture of overall foreign loss to the extent of amount recognized.
- (iv) Priorities among dispositions in which gain is deemed to be recognized.
- (5) Definitions.
- (i) Disposition.
- (ii) Property used in a trade or business.
- (iii) Property used predominantly outside the United States.
- (iv) Property which is a material factor in the realization of income.
- (6) Carryover of overall foreign loss accounts in a corporate acquisition to which section 381(a) applies.
- (7) Illustrations.

*§ 1.904(f)-3 Allocation of net operating losses and net capital losses.*

- (a) Allocation of net operating loss carrybacks and carryovers that include overall foreign losses.
- (b) Allocation of net capital loss carrybacks and carryovers that include overall foreign losses.
- (c) Transitional rule.
- (d) Illustrations.

*§ 1.904(f)-4 Recapture of foreign losses out of accumulation distributions from a foreign trust.*

- (a) In general.
- (b) Effect of recapture on foreign tax credit limitation under section 667(d).
- (c) Recapture if taxpayer deducts foreign taxes deemed distributed.
- (d) Illustrations.

*§ 1.904(f)-5 Special rules for recapture of overall foreign losses of a domestic trust.*

- (a) In general.

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(b) Recapture of trust's overall foreign loss.

- (1) Trust accumulates income.
- (2) Trust distributes income.
- (3) Trust accumulates and distributes income.
- (c) Amounts allocated to beneficiaries.
- (d) Section 904(f)(3) dispositions to which § 1.904(f)-2(d)(4)(i) is applicable.
- (e) Illustrations.

*§ 1.904(f)-6 Transitional rule for recapture of FORI and general limitation overall foreign losses incurred in taxable year beginning before January 1, 1983, from foreign source taxable income subject to the general limitation in taxable years beginning after December 31, 1982.*

- (a) General Rule.
- (b) Recapture of pre-1983 FORI and general limitation overall foreign losses from post-1982 income.
  - (1) Recapture from income subject to the same limitation.
  - (2) Recapture from income subject to the other limitation.
  - (c) Coordination of recapture of pre-1983 and post-1982 overall foreign losses.
  - (d) Illustrations.

### *§ 1.904(f)-12 Transition rules.*

- (a) Recapture in years beginning after December 31, 1986, of overall foreign losses incurred in taxable years beginning before January 1, 1987.
  - (1) In general.
  - (2) Rule for general limitation losses.
    - (i) In general.
    - (ii) Exception.
  - (3) Priority of recapture of overall foreign losses incurred in pre-effective date taxable years.
  - (4) Examples.
    - (b) Treatment of overall foreign losses that are part of net operating losses incurred in pre-effective date taxable years which are carried forward to post-effective date taxable years.
      - (1) Rule.
      - (2) Example.
    - (c) Treatment of overall foreign losses that are part of net operating losses incurred in post-effective date taxable years which are carried back to pre-effective date taxable years.
      - (1) Allocation to analogous income category.
      - (2) Allocation to U.S. source income.
      - (3) Allocation to other separate limitation categories.
      - (4) Examples.
    - (d) Recapture of FORI and general limitation overall foreign losses incurred in taxable years beginning before January 1, 1983.
    - (e) Recapture of pre-1983 overall foreign losses determined on a combined basis.

(f) Transition rules for taxable years beginning before December 31, 1990.

*§ 1.904(i)-1 Limitation on use of deconsolidation to avoid foreign tax credit limitations.*

- (a) General rule.
  - (1) Determination of taxable income.
  - (2) Allocation.
    - (b) Definitions and special rules.
      - (i) Affiliate.
        - (i) Generally.
        - (ii) Rules for consolidated groups.
        - (iii) Exception for newly acquired affiliates.
      - (2) Includible corporation.
      - (c) Taxable years.
      - (d) Consistent treatment of foreign taxes paid.
      - (e) Effective date.

[T.D. 8412, 57 FR 20642, May 14, 1992, as amended by T.D. 8627, 60 FR 56119, Nov. 7, 1995; T.D. 8805, 64 FR 1515, Jan. 11, 1999; T.D. 8916, 66 FR 274, Jan. 3, 2001]

### **§ 1.904-1 Limitation on credit for foreign taxes.**

(a) *Per-country limitation*—(1) *General.* In the case of any taxpayer who does not elect the overall limitation under section 904(a)(2), the amount allowable as a credit for income or profits taxes paid or accrued to a foreign country or a possession of the United States is subject to the per-country limitation prescribed in section 904(a)(1). Such limitation provides that the credit for such taxes paid or accrued (including those deemed to have been paid or accrued other than by reason of section 904(d)) to each foreign country or possession of the United States shall not exceed that proportion of the tax against which credit is taken which the taxpayer's taxable income from sources within such country or possession (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year. For special rules regarding the application of the per-country limitation when the taxpayer has derived section 904(f) interest or section 904(f) dividends, see § 1.904-4 or § 1.904-5.

(2) *Illustration of principles.* The operation of the per-country limitation under section 904(a)(1) on the credit for foreign taxes paid or accrued may be illustrated by the following examples: