

26 U.S. Code § 951A. Global intangible low-taxed income included in gross income of United States shareholders

U.S. Code Notes

(a) IN GENERAL

Each person who is a United States shareholder of any controlled foreign corporation for any taxable year of such United States shareholder shall include in gross income such shareholder's global intangible low-taxed income for such taxable year.

(b) GLOBAL INTANGIBLE LOW-TAXED INCOME For purposes of this section —

(1) IN GENERAL The term "global intangible low-taxed income" means, with respect to any United States shareholder for any taxable year of such United States shareholder, the excess (if any) of—

(A) such shareholder's net CFC tested income for such taxable year, over

(B) such shareholder's net deemed tangible income return for such taxable year.

(2) NET DEEMED TANGIBLE INCOME RETURN The term "net deemed tangible income return" means, with respect to any United States shareholder for any taxable year, the excess of—

(A) 10 percent of the aggregate of such shareholder's pro rata share of the qualified business asset investment of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such taxable year (determined for each taxable year of each such controlled foreign corporation which ends in or with such taxable year of such United States shareholder), over

(B) the amount of interest expense taken into account under subsection (c)(2)(A)(ii) in determining the shareholder's net CFC tested income for the taxable year to the extent the interest income attributable to such expense is not taken into account in determining such shareholder's net CFC tested income.

(c) NET CFC TESTED INCOME For purposes of this section—

(1) IN GENERAL The term “net CFC tested income” means, with respect to any United States shareholder for any taxable year of such United States shareholder, the excess (if any) of—

(A) the aggregate of such shareholder's pro rata share of the tested income of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such taxable year of such United States shareholder (determined for each taxable year of such controlled foreign corporation which ends in or with such taxable year of such United States shareholder), over

(B) the aggregate of such shareholder's pro rata share of the tested loss of each controlled foreign corporation with respect to which such shareholder is a United States shareholder for such taxable year of such United States shareholder (determined for each taxable year of such controlled foreign corporation which ends in or with such taxable year of such United States shareholder).

(2) TESTED INCOME; TESTED LOSS For purposes of this section—

(A) Tested income The term “tested income” means, with respect to any controlled foreign corporation for any taxable year of such controlled foreign corporation, the excess (if any) of—

(i) the gross income of such corporation determined without regard to—

(I) any item of income described in section 952(b),

(II) any gross income taken into account in determining the subpart F income of such corporation,

(III) any gross income excluded from the foreign base company income (as defined in section 954) and the insurance income (as defined in section 953) of such corporation by reason of section 954(b)(4),

(IV) any dividend received from a related person (as defined in section 954(d)(3)), and

(V) any foreign oil and gas extraction income (as defined in section 907(c)(1)) of such corporation, over

(ii) the deductions (including taxes) properly allocable to such gross income under rules similar to the rules of section 954(b)(5) (or to which such deductions would be allocable if there were such gross income).

(B) Tested loss

(i) In general

The term “tested loss” means, with respect to any controlled foreign corporation for any taxable year of such controlled foreign corporation, the excess (if any) of the amount described in subparagraph (A)(ii) over the amount described in subparagraph (A)(i).

(ii) Coordination with subpart F to deny double benefit of losses

Section 952(c)(1)(A) shall be applied by increasing the earnings and profits of the controlled foreign corporation by the tested loss of such corporation.

(d) QUALIFIED BUSINESS ASSET INVESTMENT For purposes of this section

(1) IN GENERAL The term “qualified business asset investment” means, with respect to any controlled foreign corporation for any taxable year, the average of such corporation’s aggregate adjusted bases as of the close of each quarter of such taxable year in specified tangible property

(A) used in a trade or business of the corporation, and

(B) of a type with respect to which a deduction is allowable under section 167.

(2) SPECIFIED TANGIBLE PROPERTY

(A) In general

The term “specified tangible property” means, except as provided in subparagraph (B), any tangible property used in the production of tested income.

(B) Dual use property

In the case of property used both in the production of tested income and income which is not tested income, such property shall be treated as specified tangible property in the same proportion that the gross income described in subsection (c)(1)(A) produced with respect to such property bears to the total gross income produced with respect to such property.

(3) ^[1] DETERMINATION OF ADJUSTED BASIS For purposes of this subsection, notwithstanding any provision of this title (or any other provision of law) which is enacted after the date of the enactment of this section, the adjusted basis in any property shall be determined—

(A) by using the alternative depreciation system under section 168(g), and

(B) by allocating the depreciation deduction with respect to such property ratably to each day during the period in the taxable year to which such depreciation relates.

(3) ¹ PARTNERSHIP PROPERTY For purposes of this subsection, if a controlled foreign corporation holds an interest in a partnership at the close of such taxable year of the controlled foreign corporation, such controlled foreign corporation shall take into account under paragraph (1) the controlled foreign corporation's distributive share of the aggregate of the partnership's adjusted bases (determined as of such date in the hands of the partnership) in tangible property held by such partnership to the extent such property—

(A) is used in the trade or business of the partnership,

(B) is of a type with respect to which a deduction is allowable under section 167, and

(C) is used in the production of tested income (determined with respect to such controlled foreign corporation's distributive share of income with respect to such property).

For purposes of this paragraph, the controlled foreign corporation's distributive share of the adjusted basis of any property shall be the

controlled foreign corporation's distributive share of income with respect to such property.

(4) REGULATIONS The Secretary shall issue such regulations or other guidance as the Secretary determines appropriate to prevent the avoidance of the purposes of this subsection, including regulations or other guidance which provide for the treatment of property if—

(A) such property is transferred, or held, temporarily, or

(B) the avoidance of the purposes of this paragraph is a factor in the transfer or holding of such property.

(e) DETERMINATION OF PRO RATA SHARE, ETC. For purposes of this section—

(1) IN GENERAL

The pro rata shares referred to in subsections (b), (c)(1)(A), and (c)(1)(B), respectively, shall be determined under the rules of section 951(a)(2) in the same manner as such section applies to subpart F income and shall be taken into account in the taxable year of the United States shareholder in which or with which the taxable year of the controlled foreign corporation ends.

(2) TREATMENT AS UNITED STATES SHAREHOLDER

A person shall be treated as a United States shareholder of a controlled foreign corporation for any taxable year of such person only if such person owns (within the meaning of section 958(a)) stock in such foreign corporation on the last day in the taxable year of such foreign corporation on which such foreign corporation is a controlled foreign corporation.

(3) TREATMENT AS CONTROLLED FOREIGN CORPORATION

A foreign corporation shall be treated as a controlled foreign corporation for any taxable year if such foreign corporation is a controlled foreign corporation at any time during such taxable year.

(f) TREATMENT AS SUBPART F INCOME FOR CERTAIN PURPOSES

(1) IN GENERAL

(A) Application

Except as provided in subparagraph (B), any global intangible low-taxed income included in gross income under subsection (a) shall be treated in the same manner as an amount included under section 951(a)(1)(A) for purposes of applying sections 168(h)(2)(B), 535(b)(10), 851(b), 904(h)(1), 959, 961, 962, 993(a)(1)(E), 996(f)(1), 1248(b)(1), 1248(d)(1), 6501(e)(1)(C), 6654(d)(2)(D), and 6655(e)(4).

(B) Exception

The Secretary shall provide rules for the application of subparagraph (A) to other provisions of this title in any case in which the determination of subpart F income is required to be made at the level of the controlled foreign corporation.

(2) ALLOCATION OF GLOBAL INTANGIBLE LOW-TAXED INCOME TO

CONTROLLED FOREIGN CORPORATIONS For purposes of the sections referred to in paragraph (1), with respect to any controlled foreign corporation any pro rata amount from which is taken into account in determining the global intangible low-taxed income included in gross income of a United States shareholder under subsection (a), the portion of such global intangible low-taxed income which is treated as being with respect to such controlled foreign corporation is—

(A) in the case of a controlled foreign corporation with no tested income, zero, and

(B) in the case of a controlled foreign corporation with tested income, the portion of such global intangible low-taxed income which bears the same ratio to such global intangible low-taxed income as—

(i) such United States shareholder's pro rata amount of the tested income of such controlled foreign corporation, bears to

(ii) the aggregate amount described in subsection (c)(1)(A) with respect to such United States shareholder.

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