

accumulated profits at the end of its last pre-effective date year, then absent an adjustment that restores earnings to a pre-effective date taxable year (for example, a refund of foreign taxes) the corporation will never be able to pay a dividend out of pre-effective date earnings and profits, and thus will not be able to claim a credit for taxes deemed paid under section 902 for any foreign income taxes remaining in pre-effective date years.

The regulations redesignate §§ 1.902-1 and 1.902-2 of the existing final regulations as §§ 1.902-3 and 1.902-4, respectively, and make conforming amendments to those regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Caren Silver Shein of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.902-1 also issued under 26 U.S.C. 902(c)(7). Section 1.902-2 also issued under 26 U.S.C. 902(c)(7). * * *

§§ 1.902-1 and 1.902-2 [Redesignated §§ 1.902-3 and 1.902-4]

Par. 2. Sections 1.902-1 and 1.902-2 are redesignated §§ 1.902-3 and 1.902-4, respectively.

Par. 3. Sections 1.902-0, 1.902-1 and 1.902-2 are added to read as follows:

§ 1.902-0 Outline of regulations provisions for section 902.

This section lists the provisions under section 902.

§ 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.
 - (1) Domestic shareholder.
 - (2) First-tier corporation.
 - (3) Second-tier corporation.
 - (4) Third-tier corporation.
 - (5) Example.
 - (6) Upper- and lower-tier corporations.
 - (7) Foreign income taxes.
 - (8) Post-1986 foreign income taxes.
 - (i) In general.
 - (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.
 - (iii) Foreign income taxes paid or accrued with respect to high withholding tax interest.
 - (9) Post-1986 undistributed earnings.
 - (i) In general.
 - (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.
 - (iii) Reduction for foreign income taxes paid or accrued.
 - (iv) Special allocations.
 - (10) Pre-1987 accumulated profits.
 - (i) Definition.
 - (ii) Computation of pre-1987 accumulated profits.
 - (iii) Foreign income taxes attributable to pre-1987 accumulated profits.
 - (11) Dividend.
 - (12) Dividend received.
 - (13) Special effective date.
 - (i) Rule.

- (ii) Example.
- (b) Computation of foreign income taxes deemed paid by a domestic shareholder, first-tier corporation, and second-tier corporation.
 - (1) General rule.
 - (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.
 - (ii) Portion of dividend out of pre-1987 accumulated profits.
 - (3) Dividends paid out of pre-1987 accumulated profits.
 - (4) Deficits in accumulated earnings and profits.
 - (5) Examples.
- (c) Special rules.
 - (1) Separate computations required for dividends from each first-tier and lower-tier corporation.
 - (i) Rule.
 - (ii) Example.
 - (2) Section 78 gross-up.
 - (i) Foreign income taxes deemed paid by a domestic shareholder.
 - (ii) Foreign income taxes deemed paid by an upper-tier corporation.
 - (iii) Example.
 - (3) Creditable foreign income taxes.
 - (4) Foreign mineral income.
 - (5) Foreign taxes paid or accrued in connection with the purchase or sale of certain oil and gas.
 - (6) Foreign oil and gas extraction income.
 - (7) United States shareholders of controlled foreign corporations.
 - (8) Credit for foreign taxes deemed paid in a section 304 transaction.
 - (9) Effect of section 482 adjustments on post-1986 foreign income taxes and post-1986 undistributed earnings.
- (d) Dividends from controlled foreign corporations.
 - (1) General rule.
 - (2) Look-through.
 - (i) Dividends.
 - (ii) Coordination with section 960.
 - (3) Special rules.
 - (i) Dividends distributed out of earnings accumulated before a controlled foreign corporation became a controlled foreign corporation.
 - (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.
 - (iii) Intra-group acquisitions.
 - (iv) Ordering rule.
 - (v) Examples.
 - (e) Information to be furnished.
 - (f) Examples.
 - (g) Effective date.