

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to taxable years beginning after Dec. 31, 1987, see section 10221(e)(2) of Pub. L. 100-203, as amended, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 611(b) of Pub. L. 99-514 provided that:

“(1) IN GENERAL.—The amendments made by subsection (a) [amending this section and sections 243, 244, 246A, and 805 of this title] shall apply to dividends received or accrued after December 31, 1986, in taxable years ending after such date.

“(2) AMENDMENT RELATING TO LIMITATION ON DEDUCTIONS.—The amendment made by subsection (a) to section 246(b) of the Internal Revenue Code of 1986 shall apply to taxable years beginning after December 31, 1986.”

Amendment by section 1275(a)(2)(B) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1277 of Pub. L. 99-514, set out as a note under section 931 of this title.

Section 1804(b)(1)(C) of Pub. L. 99-514 provided that: “The amendments made by this paragraph [amending this section] shall apply to stock acquired after March 1, 1986.”

Amendment by section 1812(d)(1) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 53(d)(2) of Pub. L. 98-369 applicable to distributions after Mar. 1, 1984, in taxable years ending after such date, and amendment of subsec. (c) of this section by section 53(b) of Pub. L. 98-369, applicable to stock acquired after July 18, 1984, in taxable years ending after such date, see section 53(e)(1), (2) of Pub. L. 98-369, set out as an Effective Date note under section 1059 of this title.

Amendment by section 177(b) of Pub. L. 98-369, effective Jan. 1, 1985, see section 177(d) of Pub. L. 98-369, set out as a note under section 172 of this title.

Amendment by section 801(b)(2)(A) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to taxable years beginning after Dec. 31, 1982, see section 213(e)(1) of Pub. L. 97-248, set out as a note under section 936 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For effective date of amendment by section 1051(f)(3) of Pub. L. 94-455, see section 1051(i) of Pub. L. 94-455, set out as a note under section 27 of this title.

Amendment by section 1906(b)(13)(A) of Pub. L. 94-455 effective Feb. 1, 1977, see section 1906(d)(1) of Pub. L. 94-455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92-178, set out as an Effective Date note under section 991 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 512(f)(3) of Pub. L. 91-172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section

512(g) of Pub. L. 91-172, set out as a note under section 1212 of this title.

Section 434(c) of Pub. L. 91-172 provided that: “The amendments made by this section [enacting section 596 of this title and amending this section] shall apply to taxable years beginning after July 11, 1969.”

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to dividends received in taxable years ending after Dec. 31, 1963, see section 214(c) of Pub. L. 88-272, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 18(b) of Pub. L. 85-866 provided that: “The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1957, but only with respect to shares of stock acquired or short sales made after December 31, 1957.”

Amendment by section 57(c)(2) of Pub. L. 85-866 applicable with respect to taxable years beginning after Sept. 2, 1958, see section 57(d) of Pub. L. 85-866, set out as a note under section 243 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 246A. Dividends received deduction reduced where portfolio stock is debt financed**(a) General rule**

In the case of any dividend on debt-financed portfolio stock, there shall be substituted for the percentage which (but for this subsection) would be used in determining the amount of the deduction allowable under section 243, 244, or 245(a) a percentage equal to the product of—

(1) 70 percent (80 percent in the case of any dividend from a 20-percent owned corporation as defined in section 243(c)(2)), and

(2) 100 percent minus the average indebtedness percentage.

(b) Section not to apply to dividends for which 100 percent dividends received deduction allowable

Subsection (a) shall not apply to—

(1) qualifying dividends (as defined in section 243(b) without regard to section 243(d)(4)), and

(2) dividends received by a small business investment company operating under the Small Business Investment Act of 1958.

(c) Debt financed portfolio stock

For purposes of this section—

(1) In general

The term “debt financed portfolio stock” means any portfolio stock if at some time during the base period there is portfolio indebtedness with respect to such stock.

(2) Portfolio stock

The term “portfolio stock” means any stock of a corporation unless—

(A) as of the beginning of the ex-dividend date, the taxpayer owns stock of such corporation—

(i) possessing at least 50 percent of the total voting power of the stock of such corporation, and

(ii) having a value equal to at least 50 percent of the total value of the stock of such corporation, or

(B) as of the beginning of the ex-dividend date—

(i) the taxpayer owns stock of such corporation which would meet the requirements of subparagraph (A) if “20 percent” were substituted for “50 percent” each place it appears in such subparagraph, and

(ii) stock meeting the requirements of subparagraph (A) is owned by 5 or fewer corporate shareholders.

(3) Special rule for stock in a bank or bank holding company

(A) In general

If, as of the beginning of the ex-dividend date, the taxpayer owns stock of any bank or bank holding company having a value equal to at least 80 percent of the total value of the stock of such bank or bank holding company, for purposes of paragraph (2)(A)(i), the taxpayer shall be treated as owning any stock of such bank or bank holding company which the taxpayer has an option to acquire.

(B) Definitions

For purposes of subparagraph (A)—

(i) Bank

The term “bank” has the meaning given such term by section 581.

(ii) Bank holding company

The term “bank holding company” means a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956).

(4) Treatment of certain preferred stock

For purposes of determining whether the requirements of subparagraph (A) or (B) of paragraph (2) or of subparagraph (A) of paragraph (3) are met, stock described in section 1504(a)(4) shall not be taken into account.

(d) Average indebtedness percentage

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term “average indebtedness percentage” means the percentage obtained by dividing—

(A) the average amount (determined under regulations prescribed by the Secretary) of the portfolio indebtedness with respect to the stock during the base period, by

(B) the average amount (determined under regulations prescribed by the Secretary) of the adjusted basis of the stock during the base period.

(2) Special rule where stock not held throughout base period

In the case of any stock which was not held by the taxpayer throughout the base period, paragraph (1) shall be applied as if the base period consisted only of that portion of the base period during which the stock was held by the taxpayer.

(3) Portfolio indebtedness

(A) In general

The term “portfolio indebtedness” means any indebtedness directly attributable to investment in the portfolio stock.

(B) Certain amounts received from short sale treated as indebtedness

For purposes of subparagraph (A), any amount received from a short sale shall be treated as indebtedness for the period beginning on the day on which such amount is received and ending on the day the short sale is closed.

(4) Base period

The term “base period” means, with respect to any dividend, the shorter of—

(A) the period beginning on the ex-dividend date for the most recent previous dividend on the stock and ending on the day before the ex-dividend date for the dividend involved, or

(B) the 1-year period ending on the day before the ex-dividend date for the dividend involved.

(e) Reduction in dividends received deduction not to exceed allocable interest

Under regulations prescribed by the Secretary, any reduction under this section in the amount allowable as a deduction under section 243, 244, or 245 with respect to any dividend shall not exceed the amount of any interest deduction (including any deductible short sale expense) allocable to such dividend.

(f) Regulations

The regulations prescribed for purposes of this section under section 7701(f) shall include regulations providing for the disallowance of interest deductions or other appropriate treatment (in lieu of reducing the dividend received deduction) where the obligor of the indebtedness is a person other than the person receiving the dividend.

(Added Pub. L. 98-369, div. A, title I, §51(a), July 18, 1984, 98 Stat. 562; amended Pub. L. 99-514, title VI, §611(a)(4), title XVIII, §1804(a), Oct. 22, 1986, 100 Stat. 2249, 2798; Pub. L. 100-203, title X, §10221(d)(2), Dec. 22, 1987, 101 Stat. 1330-409; Pub. L. 100-647, title I, §1012(l)(1), Nov. 10, 1988, 102 Stat. 3513; Pub. L. 108-311, title IV, §408(a)(9), Oct. 4, 2004, 118 Stat. 1191.)

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (b)(2), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

Section 2(a) of the Bank Holding Company Act of 1956, referred to in subsec. (c)(3)(B)(ii), is classified to section 1841(a) of Title 12, Banks and Banking.

AMENDMENTS

2004—Subsec. (b)(1). Pub. L. 108-311 substituted “section 243(d)(4)” for “section 243(c)(4)”.

1988—Subsec. (a). Pub. L. 100-647 struck out at end “The preceding sentence shall be applied before any determination of a ratio under paragraph (1) or (2) of section 245(a).”

1987—Subsec. (a)(1). Pub. L. 100-203 substituted “70 percent (80 percent in the case of any dividend from a 20-percent owned corporation as defined in section 243(c)(2))” for “80 percent”.

1986—Subsec. (a). Pub. L. 99-514, §1804(a), substituted “or 245(a)” for “or 245” and inserted “The preceding sentence shall be applied before any determination of a ratio under paragraph (1) or (2) of section 245(a).”

Subsec. (a)(1). Pub. L. 99-514, §611(a)(4), substituted “80 percent” for “85 percent”.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable to dividends received or accrued after Dec. 31, 1987, in taxable years ending after such date, see section 10221(e)(1) of Pub. L. 100-203, set out as a note under section 243 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 611(a)(4) of Pub. L. 99-514 applicable to dividends received or accrued after Dec. 31, 1986, in taxable years ending after such date, see section 611(b) of Pub. L. 99-514, set out as a note under section 246 of this title.

Amendment by section 1804(a) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 51(c) of Pub. L. 98-369 provided that: “The amendments made by this section [enacting this section] shall apply with respect to stock the holding period for which begins after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.”

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 247. Dividends paid on certain preferred stock of public utilities

(a) Amount of deduction

In the case of a public utility, there shall be allowed as a deduction an amount computed as follows:

(1) First determine the amount which is the lesser of—

(A) the amount of dividends paid during the taxable year on its preferred stock, or

(B) the taxable income for the taxable year (computed without the deduction allowed by this section).

(2) Then multiply the amount determined under paragraph (1) by the fraction—

(A) the numerator of which is 14 percent, and

(B) the denominator of which is that percentage which equals the highest rate of tax specified in section 11(b).

For purposes of the deduction provided in this section, the amount of dividends paid shall not include any amount distributed in the current taxable year with respect to dividends unpaid and accumulated in any taxable year ending before October 1, 1942. Amounts distributed in the current taxable year with respect to dividends unpaid and accumulated for a prior taxable year shall for purposes of this subsection be deemed to be distributed with respect to the earliest year or years for which there are dividends unpaid and accumulated.

(b) Definitions

For purposes of this section and section 244—

(1) Public utility

The term “public utility” means a corporation engaged in the furnishing of telephone service or in the sale of electrical energy, gas, or water, if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof or by an agency or instrumentality of the United States or by a public utility or public service commission or other similar body of the District of Columbia or of any State or political subdivision thereof.

(2) Preferred stock

(A) In general

The term “preferred stock” means stock issued before October 1, 1942, which during the whole of the taxable year (or the part of the taxable year after its issue) was stock the dividends in respect of which were cumulative, limited to the same amount, and payable in preference to the payment of dividends on other stock.

(B) Certain stock issued on or after October 1, 1942

Stock issued on or after October 1, 1942, shall be deemed for purposes of this paragraph to have been issued before October 1, 1942, if it was issued to refund or replace bonds or debentures issued before October 1, 1942, or to refund or replace other preferred stock (including stock which is preferred stock by reason of this subparagraph or subparagraph (D)), but only to the extent that the par or stated value of the new stock does not exceed the par, stated, or face value of the bonds or debentures issued before October 1, 1942, or the other preferred stock, which such new stock is issued to refund or replace.

(C) Determination under regulations

The determination of whether stock was issued to refund or replace bonds or debentures issued before October 1, 1942, or to refund or replace other preferred stock, shall be made under regulations prescribed by the Secretary.

(D) Issuance of stock

For purposes of subparagraph (B), issuance of stock includes issuance either by the same or another corporation in a transaction which is a reorganization (as defined in section 368(a)) or a transaction subject to part VI of subchapter O as in effect before