

sale or exchange of stock in a foreign corporation, and solely by reason of the application of section 337 (relating to certain liquidations) the gain was not recognized, then the earnings and profits of such domestic corporation accumulated for the taxable year, as computed under paragraph (d) of § 1.1248-2 or paragraph (b) of § 1.1248-3 (as the case may be), shall be considered to be an amount equal to the portion of such gain realized during the taxable year which, if section 337 had not applied, would have been treated as a dividend under section 1248(a).

(2) If the person selling or exchanging the stock in the domestic corporation is an individual, the limitation on tax attributable to the amount included in his gross income as a dividend under subparagraph (1) of this paragraph shall be determined, in accordance with the principles of paragraph (f) of § 1.1248-4, by treating the domestic corporation as a first tier corporation.

(3)(i) If the earnings and profits of the foreign corporation or corporations (or of the domestic corporation treated as a first tier corporation) to be taken into account under subparagraph (1) of this paragraph are not established in the manner provided in paragraph (a)(1) of § 1.1248-7, all of the gain from the sale or exchange of the share (or block) of the domestic corporation shall be treated as a dividend.

(ii) To the extent that the person does not establish, in the manner provided in paragraph (c) of § 1.1248-7, the foreign taxes paid by such foreign corporation or corporations to be taken into account for purposes of computing the limitation on tax attributable to a share, such foreign taxes shall not be taken into account for purposes of such computation.

(c) *Corporation formed or availed of principally for holding stock of foreign corporations.* Whether or not a domestic corporation is formed or availed of principally for the holding, directly or indirectly, of stock of one or more foreign corporations shall be determined on the basis of all the facts and circumstances of each particular case.

[T.D. 6779, 29 FR 18143, Dec. 22, 1964]

§ 1.1248-7 Taxpayer to establish earnings and profits and foreign taxes.

(a) *In general.* (1) If a taxpayer sells or exchanges stock in a foreign corporation which was a controlled foreign corporation and the Commissioner determines that the taxpayer has not established the amount of the earnings and profits of the corporation attributable to the stock under § 1.1248-2 or § 1.1248-3, whichever is applicable, all the gain from such sale or exchange shall be treated as a dividend under section 1248(a). See section 1248(g). A taxpayer shall be considered to have established such amount if:

(i) He attaches to his income tax return, filed on or before the last day prescribed by law (including extensions thereof) for his taxable year in which he sold or exchanged the stock, the schedule prescribed by paragraph (b) of this section or, if such last day is before April 1, 1965, he files such schedule before such date with the district director with whom such return was filed, and

(ii) He establishes in the manner prescribed by paragraph (d) of this section the correctness of each amount shown on such schedule.

(2) Notwithstanding an omission of information from, or an error with respect to an amount shown on, the schedule referred to in subparagraph (1)(i) of this paragraph, a taxpayer shall be considered to have complied with such subparagraph (1)(i) if:

(i) He establishes that such omission or error was inadvertent, or due to reasonable cause and not due to willful neglect, and that he has substantially complied with the requirements of this section, and

(ii) The taxpayer corrects such omission or error at the time when he complies with paragraph (d) of this section.

(3) For the requirement to establish the amount of foreign taxes to be taken into account for purposes of section 1248(b), see paragraph (c) of this section.

(b) *Schedule attached to return.* (1) The taxpayer shall attach to his income tax return for his taxable year in which he sold or exchanged the stock, a schedule showing his name, address, and identifying number. Except to the extent

provided in paragraph (e) of this section, the schedule shall also show the amount of the earnings and profits attributable under paragraph (a) of § 1.1248-2 or paragraph (a) of § 1.1248-3 (as the case may be) to the stock, and, in order to support the computation of such amount, any additional information required by subparagraphs (2), (3), (4), and (5) of this paragraph.

(2) The schedule shall also show for the first tier corporation, and for each lower tier corporation as to which information is required under subparagraph (4) of this paragraph, (i) the name of the corporation, (ii) the country under whose laws the corporation is created or organized, and (iii) the last day of the taxable year which the corporation regularly uses in computing its income.

(3) If the amount of earnings and profits attributable to a block of stock sold or exchanged are computed under § 1.1248-2, the schedule shall also show:

(i) For each taxable year of the corporation, beginning after December 31, 1962, during the period the taxpayer held (or was considered to have held by reason of the application of section 1223, taking into account § 1.1248-8) the block, (a) the earnings and profits accumulated for each such taxable year computed under paragraph (d) of § 1.1248-2, and (b) the sum thereof computed under paragraph (e) (1)(i) and (2) of § 1.1248-2,

(ii) The number of shares in the block and the total number of shares of the corporation outstanding during such period,

(iii) If during the period the person held (or is considered to have held by reason of the application of section 1223, taking into account § 1.1248-8) the block any amount was included under section 951 in the gross income of such person (or another person) in respect of the block, the computation of the excess referred to in paragraph (e)(3)(ii) of § 1.1248-2, and

(iv) If the amount of earnings and profits of a lower tier corporation attributable to the block are computed under paragraph (a)(3) of § 1.1248-2, (a) the number of shares in the lower tier corporation which the taxpayer owns within the meaning of section 958(a)(2)(b) the total number of shares

of such lower tier corporation outstanding during such period, and (c) in respect of such lower tier corporation, the information prescribed in subdivisions (i) and (iii) of this subparagraph.

(4) If the amount of earnings and profits attributable to a share (or block) sold or exchanged are computed under § 1.1248-3, the schedule shall also show for each taxable year of the corporation beginning after December 31, 1962, any day of which falls in a period or periods the taxpayer held (or was considered to have held by reason of the application of section 1223, taking into account § 1.1248-8) the stock while the corporation was a controlled foreign corporation:

(i) The number of days in such period or periods, but only if such number is less than the total number of days in such taxable year,

(ii) The earnings and profits accumulated for the taxable year computed under paragraph (b) of § 1.1248-3,

(iii) The number of shares in the corporation outstanding, or deemed under paragraph (c)(2) of § 1.1248-3 to be outstanding, on each day of the taxable year,

(iv) The taxpayer's tentative ratable share computed under paragraph (c) or (d) (as the case may be) of § 1.1248-3,

(v) The amount of, and a short description of each adjustment to, the tentative ratable share under paragraph (e) of § 1.1248-3, and

(vi) The amount of the ratable share referred to in paragraph (e)(1) of § 1.1248-3.

(5) In respect of a taxable year referred to in subparagraph (4) of this paragraph of a first tier corporation, if the taxpayer is required to compute under paragraph (f)(5) of § 1.1248-3 his ratable share of the earnings and profits for a taxable year of the lower tier corporation attributable to such taxable year of such first tier corporation, then for such taxable year of the lower tier corporation the schedule shall show:

(i) The earnings and profits accumulated for the taxable year of the lower tier corporation, computed under paragraph (b) of § 1.1248-3,

(ii) Each percentage described in paragraph (f)(2) (ii), (iii), and (iv) of § 1.1248-3,

§ 1.1248-7

26 CFR Ch. I (4-1-09 Edition)

(iii) The amount of the taxpayer's tentative ratable share computed under paragraph (f) (2) or (4) (as the case may be) of §1.1248-3,

(iv) The amount of, and a short description of each adjustment to, the tentative ratable share under paragraph (f)(5) of §1.1248-3, and

(v) The amount of the ratable share referred to in paragraph (f)(5)(i) of §1.1248-3.

(c) *Foreign taxes.* (1) If the taxpayer fails to establish any portion of the amount of any foreign taxes which he is required to establish by subparagraph (2) of this paragraph, then such portion shall not be taken into account under section 1248(b)(1)(B):

(2) The taxpayer shall establish in respect of the stock he sells or exchanges the amount of the foreign taxes described in section 1248(b)(1)(B) paid by the first tier corporation for each taxable year of such corporation for which the information is required under paragraph (b) (3) or (4) of this section, and the amount of such taxes paid by each lower tier corporation for each taxable year (as to which information is required under paragraph (b) (3)(iv) or (5) of this section) of each such lower tier corporation. A taxpayer shall be considered to have established the amount of such foreign taxes if:

(i) He attaches to the schedule described in paragraph (b) of this section a supplementary schedule which, except to the extent provided in paragraph (e) of this section, sets forth the amount of such foreign taxes for each taxable year (of the first tier corporation and of each such lower tier corporation) as to which such amount must be established under this subparagraph, and

(ii) He establishes in the manner prescribed by paragraph (d)(2) of this section the correctness of each amount shown on such supplementary schedule.

(d) *Establishing amounts on schedules.* (1) A taxpayer shall be considered to have established, in respect of the stock he sold or exchanged, the correctness of an amount shown on a schedule described in paragraph (b) of this section only if he produces or provides within 180 days after demand by the district director (or within such

longer period to which such director consents):

(i) The books of original entry, or similar systematic accounting records maintained by any person or persons on a current basis as supplements to such books, which establish to the satisfaction of the district director the correctness of each such amount, and

(ii) In respect of any such books or records which are not in the English language, either an accurate English translation of any such records as are demanded, or the services of a qualified interpreter satisfactory to such director.

(2) A shareholder shall be considered to have established in respect of such stock the correctness of an amount shown on a supplementary schedule described in paragraph (c) of this section only if he produces or provides within 180 days after demand by the district director (or within such longer period to which such director consents):

(i) Evidence described in paragraph (a)(2) of §1.905-2 of such amount, or

(ii) Secondary evidence of such amount, in the same manner and to the same extent as would be permissible under paragraph (b) of §1.905-2 in the case of a taxpayer who claimed the benefits of the foreign tax credit in respect of such amount.

(e) *Insufficient information at time return is filed.* If stock in a foreign corporation, which was a controlled foreign corporation, is sold or exchanged by a taxpayer during a taxable year of the corporation (or of a lower tier corporation) which ends after the last day of the taxpayer's taxable year in which the sale or exchange occurs, and if:

(1) For the taxpayer's taxable year, the last day referred to in paragraph (a)(1) of this section for filing his income tax return with a schedule prescribed in paragraph (b) of this section, and, if applicable, with a supplemental schedule prescribed in paragraph (c) of this section, or

(2) The last day referred to in paragraph (a)(1) of this section (that is, April 1, 1965) for filing any such schedule or schedules with the district director with whom such return was filed,

Is not later than 90 days after the close of such taxable year of any such corporation, then such return with such

schedule or schedules may be filed, or any such schedule or schedules may be filed, on the basis of estimates of amounts or percentages (for any such taxable year of any such corporation) required to be shown on any such schedule or schedules. If any such estimate differs from the actual amount or percentage, the taxpayer shall, within 90 days after the close of any such taxable year of any such corporation, file (or attach to a claim for refund or amended return filed) at the office of the district director with whom he filed the return a new schedule or schedules showing the actual amounts or percentages.

[T.D. 6779, 29 FR 18143, Dec. 22, 1964 as amended by T.D. 9345, 72 FR 41445, July 30, 2007]

§ 1.1248-8 Earnings and profits attributable to stock following certain non-recognition transactions.

(a) *Scope.* This section sets forth rules for the attribution of earnings and profits for purposes of section 1248 and § 1.1248-1(a)(1) and to supplement the rules in §§ 1.1248-2 and 1.1248-3 with respect to—

(1) *Stock that an exchanging shareholder receives, or an acquiring corporation receives, in restructuring transactions.* Except as otherwise provided in this paragraph (a), stock of a foreign corporation that an exchanging shareholder receives, or an acquiring corporation receives, pursuant to a restructuring transaction (as defined in paragraph (b)(1)(vii) of this section) in which the holding period of such stock is determined by application of section 1223(1) or 1223(2), whichever is appropriate. This section shall not apply to an exchange otherwise described in this paragraph (a)(1) if, as a result of the exchange, the exchanging shareholder is required to include in income as a deemed dividend the section 1248 amount pursuant to § 1.367(b)-4(b). See paragraphs (b)(2) and (3) of this section;

(2) *Nonexchanging shareholders.* Stock of a foreign corporation that participates in a restructuring transaction that is held by a non-exchanging shareholder (as defined in paragraph (b)(1)(vi) of this section) in the restructuring transaction. See paragraph (b)(4) of this section;

(3) *Application of section 381.* Stock of a foreign corporation that receives assets in a transfer to which section 361(a) applies in connection with a reorganization described in section 368(a)(1)(A), (C), (D), (F), or (G), or in a distribution to which section 332 applies, and to which section 381(c)(2)(A) and § 1.381(c)(2)-1(a) apply. See paragraph (b)(6) of this section; or

(4) *Section 332 liquidations.* Stock of a foreign corporation that receives the assets and liabilities of a foreign corporation in a complete liquidation described in section 332 if the foreign distributee is a foreign corporate shareholder (as defined in paragraph (b)(1)(v) of this section) of the liquidating corporation. See paragraph (c) of this section.

(b) *Earnings and profits attributable to stock following a restructuring transaction—(1) Definitions.* The following definitions apply for purposes of this section:

(i) *Acquired corporation* is a corporation whose stock or assets are acquired in exchange for stock in (or stock in and other property of) either the acquiring corporation or a foreign corporation that controls, within the meaning of section 368(c), the acquiring corporation in a restructuring transaction.

(ii) *Acquiring corporation* is a corporation that acquires the stock or assets of an acquired corporation in a restructuring transaction.

(iii) *Controlled foreign corporation* is a corporation described in either section 953(c)(1)(B) or section 957.

(iv) *Exchanging shareholder* is a person that exchanges—

(A) In a restructuring transaction qualifying as a nonrecognition transaction within the meaning of section 7701(a)(45) and described in section 354, 356, or 361(a), stock in an acquired corporation for stock in either a foreign acquiring corporation or a foreign corporation that is in control, within the meaning of section 368(c), of an acquiring corporation (whether domestic or foreign); or

(B) In a restructuring transaction qualifying as a nonrecognition transaction within the meaning of section 7701(a)(45) and described in section 351,