

voting power of all classes of stock entitled to vote of N at any time during the 10-year period December 31, 1954, through December 31, 1964. The percentages of the total combined voting power in N, which A, B, and C owned during such 10-year period, are as follows:

Owner	Dec. 31, 1954- Apr. 1, 1957 (Percent)	Apr. 2, 1957- Oct. 1, 1959 (Percent)	Oct. 2, 1959- Dec. 31, 1964 (Percent)
A .....	20	20	20
B .....	9	30	30
C .....	30	15	9

Domestic corporation N does not meet the requirement of this paragraph with respect to the stock of controlled foreign corporation X for the following reasons:

(i) April 2, 1957, is the first day (during the 10-year period ending on December 31, 1964, the date N sells the X stock) on which noncorporate United States shareholders of N own more than 50 percent of the total combined voting power in N, and thus the requirement of this paragraph must be met. See subparagraph (1)(i) of this paragraph. Although A, B, and C did own, in the aggregate, more than 50 percent of such voting power before April 2, 1957, the voting power owned by B is not counted because B was not a noncorporate United States shareholder of N before such date.

(ii) Although C is a noncorporate United States shareholder on April 2, 1957, C ceases to own 10 percent or more of the total combined voting power in N on October 2, 1959. Thus, after October 1, 1959, the N stock which C owns is not counted for purposes of determining whether the more-than-50-percent stock ownership test is met. See subparagraph (1)(ii) of this paragraph. Accordingly, after October 1, 1959, the requirement of this paragraph is not met.

*Example 2.* Assume the same facts as in example (1), except that B's wife owns directly 5 percent of the total combined voting power in N from December 31, 1954, to December 31, 1964. On the basis of the assumed facts, N meets the requirement of this paragraph with respect to the stock of controlled foreign corporation X for the following reasons:

(i) December 31, 1954, is the first day (of the 10-year period ending on the date N sells the X stock) on which noncorporate United States shareholders of N own more than 50 percent of the total combined voting power in N. B is a noncorporate United States shareholder on such date because he owns, and is considered as owning, 14 percent of the total combined voting power in N (9 percent directly, and, under section 958(b), 5 percent constructively). Thus, on December 31, 1954, noncorporate United States shareholders A, B, and C own, in the aggregate, more than 50 percent of the total combined voting power in N.

(ii) A, B, and C, the noncorporate United States shareholders of N on December 31, 1954, own, and are considered as owning, more than 50 percent of the total voting power of N from December 31, 1954, to October 1, 1959. Since beginning on October 2, 1959, A owns 20 percent and B owns, and is considered as owning, 35 percent of the total combined voting power in N. A and B owns, and are considered as owning, more than 50 percent of the total combined voting power in N from October 2, 1959, to December 31, 1964. Therefore, the requirement of this paragraph is met.

(d) *Application of section to lower tier corporation—(1) General.* For purposes of paragraph (g)(1)(ii) of §1.1248-3, a United States person satisfies the requirements of this subparagraph in respect of stock of a lower tier corporation which such person, by reason of his direct ownership of the share (or block) of the first tier corporation sold or exchanged, owned within the meaning of section 958(a)(2) on the date he sold or exchanged such share (or block), if on such date:

(i) The 10-year stock ownership requirement of paragraph (b) of this section is met by such person with respect to any stock in the lower tier corporation which such person so owned, and

(ii) In the case of a United States person which is a domestic corporation, the requirement of paragraph (c) of this section, if applicable, is met.

(2) *Special rule.* For purposes of this paragraph, in applying paragraphs (b) and (c) of this section, the sale or exchange of a share (or block) of stock in a first tier corporation by a United States person shall be deemed to be the sale or exchange of any stock in a lower tier corporation which the person, by reason of his direct ownership of such share (or block) of the first tier corporation, owned within the meaning of section 958(a)(2) on the date he actually sold or exchanged such share (or block) in the first tier corporation.

[T.D. 6779, 29 FR 18142, Dec. 22, 1964]

**§ 1.1248-6 Sale or exchange of stock in certain domestic corporations.**

(a) *General rule.* If a United States person recognizes gain upon the sale or exchange of a share (or block) of stock of a domestic corporation which was formed or availed of principally for the holding, directly or indirectly, of stock

of one or more foreign corporations, and if the conditions of paragraph (a)(2) of § 1.1248-1 would be met by such person in respect of the share (or block) if the domestic corporation were a foreign corporation, then section 1248 shall apply in respect of such gain in accordance with the rules provided in paragraph (b) of this section. See paragraph (d) of this section for a rule suspending the application of this section in certain circumstances.

(b) *Application.* (1) The gain referred to in paragraph (a) of this section shall be included in the gross income of the United States person as a dividend under section 1248(a) to the extent of the earnings and profits attributable under § 1.1248-2 or § 1.1248-3, whichever is applicable, to the share (or block), computed, however, in accordance with the following rules:

(i) The domestic corporation shall be treated as if it were a first tier foreign corporation;

(ii) If, after the application of subdivision (i) of this subparagraph, the provisions of paragraph (a)(3) of § 1.1248-2 or paragraph (f) of § 1.1248-3 (as the case may be) would apply in respect of a foreign corporation the stock of which is owned (within the meaning of section 958(a)) by the domestic corporation treated as the first tier corporation, such foreign corporation shall be considered a lower tier corporation;

(iii) Except to the extent provided in subdivision (iv) of this subparagraph, the earnings and profits of the domestic corporation treated as the first tier corporation accumulated for a 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 zero; and

(iv) If, during a taxable year, a domestic corporation treated as the first tier corporation realizes gain upon the 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 consid-

ered 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.

(d) *Temporary suspension of section 1248(e).* Section 1248(e) and the rules of this section do not apply to a sale, exchange, or other disposition of the stock of a domestic corporation during a period when capital gains are taxed at a rate that equals or exceeds the rate at which ordinary income is taxed.

(e) *Effective/applicability date.* Paragraph (d) of this section applies to a sale, exchange, or other disposition of

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the stock of a domestic corporation on or after September 21, 1987.

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**§ 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(h). 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