

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) 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) 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)

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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) 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,

(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]

**§ 1.1249-1 Gain from certain sales or exchanges of patents, etc., to foreign corporations.**

(a) *General rule.* Section 1249 provides that if gain is recognized from the sale or exchange after December 31, 1962, of a patent, an invention, model, or design (whether or not patented), a copyright, a secret formula or process, or any other similar property right (not including property such as goodwill, a trademark, or a trade brand) to any foreign corporation by any United States person (as defined in section 7701(a)(30)) which controls such foreign corporation, and if such gain would (but for the provisions of section 1249) be gain from the sale or exchange of a capital asset or of property described in section 1231, then such gain shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Section 1249 applies only to gain recognized in taxable years beginning after December 31, 1962.

(b) *Control.* For purposes of paragraph (a) of this section, the term *control* means, with respect to any foreign corporation, the ownership, directly or indirectly, of stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote. For purposes of the preceding sentence, the rules for determining ownership of stock provided by section 958 (a) and (b), and the principles for