

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

§ 1.1250-1

26 CFR Ch. I (4-1-02 Edition)

determining percentage of total combined voting power owned by United States shareholders provided by paragraphs (b) and (c) of § 1.957-1, shall apply.

[T.D. 6765, 29 FR 14879, Nov. 3, 1964]

§ 1.1250-1 Gain from dispositions of certain depreciable realty.

(a) *Dispositions after December 31, 1969—(1) Ordinary income.* (i) In general, section 1250(a)(1) provides that, upon a disposition of an item of section 1250 property after December 31, 1969, the applicable percentage of the lower of:

(a) The additional depreciation (as defined in § 1.1250-2) attributable to periods after December 31, 1969 in respect of the property, or

(b) The excess of the amount realized on a sale, exchange, or involuntary conversion (or the fair market value of the property on any other disposition) over the adjusted basis of the property. Shall be treated as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231 (that is, shall be recognized as ordinary income). The amount of such gain shall be determined separately for each item (see subparagraph (2)(ii) of this paragraph) of section 1250 property. If the amount determined under (b) of this subdivision exceeds the amount determined under (a) of this subdivision, then such excess shall be treated as provided in subdivision (ii) of this subparagraph. For relation of section 1250 to other provisions, see paragraph (c) of this section.

(ii) If the amount determined under subdivision (i)(b) of this subparagraph exceeds the amount determined under subdivision (i)(a) of this subparagraph, then the applicable percentage of the lower of:

(a) The additional depreciation attributable to periods before January 1, 1970, or

(b) Such excess,

shall also be recognized as ordinary income.

(iii) If gain would be recognized upon a disposition of an item of section 1250 property under subdivisions (i) and (ii) of this subparagraph, and if section 1250(d) applies, then the gain recog-

nized shall be considered as recognized first under subdivision (i) of this subparagraph. (See example (3)(i) of paragraph (c)(4) of § 1.1250-3.)

(2) *Meaning of terms.* (i) For purposes of section 1250, the term *disposition* shall have the same meaning as in paragraph (a)(3) of § 1.1245-1. *Section 1250 property* is, in general, depreciable real property other than section 1245 property. See paragraph (e) of this section. See paragraph (d)(1) of this section for meaning of the term *applicable percentage*. If, however, the property is considered to have two or more elements with separate periods (for example, because units thereof are placed in service on different dates, improvements are made to the property, or because of the application of paragraph (h) of § 1.1250-3), see the special rules of § 1.1250-5.

(ii) For purposes of applying section 1250, the facts and circumstances of each disposition shall be considered in determining what is the appropriate item of section 1250 property. In general, a building is an item of section 1250 property, but in an appropriate case more than one building may be treated as a single item. For example, if two or more buildings or structures on a single tract or parcel (or contiguous tracts or parcels) of land are operated as an integrated unit (as evidenced by their actual operation, management, financing, and accounting), they may be treated as a single item of section 1250 property. For the manner of determining whether an expenditure shall be treated as an addition to capital account of an item of section 1250 property or as a separate item of section 1250 property, see paragraph (d)(2)(iii) of § 1.1250-5.

(3) *Sale, exchange, or involuntary conversion after December 31, 1969.* (i) In the case of a disposition of section 1250 property by a sale, exchange, or involuntary conversion after December 31, 1969, the gain to which section 1250(a)(1) applies is the applicable percentage for the property (determined under paragraph (d)(1) of this section) multiplied by the lower of (a) the additional depreciation in respect of the property attributable to periods after December 31, 1969, or (b) the excess (referred to as *gain realized*) of the amount