corporation is used to avoid the application of this section.

(2) *Includible corporation.* The term *includible corporation* has the same meaning it has in section 1504(b).

(c) *Taxable years.* If all of the affiliates use the same U.S. taxable year, then that taxable year must be used for purposes of applying this section. If, however, the affiliates use more than one U.S. taxable year, then an appropriate taxable year must be used for applying this section. The determination whether a taxable year is appropriate must take into account all of the relevant facts and circumstances, including the U.S. taxable years used by the affiliates for general U.S. income tax purposes. The taxable year chosen by the affiliates for purposes of applying this section must be used consistently from year to year. The taxable year may be changed only with the prior consent of the Commissioner. Those affiliates that do not use the year determined under this paragraph (c) as their U.S. taxable year for general U.S. income tax purposes must, for purposes of this section, use their U.S. taxable year or years ending within the taxable year determined under this paragraph (c). If, however, the stock of an affiliate is disposed of so that it ceases to be an affiliate, then the taxable year of that affiliate will be considered to end on the disposition date for purposes of this section.

(d) *Consistent treatment of foreign taxes paid.* All affiliates must consistently either elect under section 901(a) to claim a credit for foreign income taxes paid or accrued, or deemed paid or accrued, or deduct foreign taxes paid or accrued under section 164. See also §1.1502–4(a); §1.905–1(a).

(e) *Effective date.* Except as provided in paragraph (b)(1)(iii) of this section (relating to newly acquired affiliates), this section is effective for taxable years of affiliates beginning after December 31, 1993.

[T.D. 8627, 60 FR 56119, Nov. 7, 1995]

§1.905–1 When credit for taxes may be taken.

(a) *In general.* The credit for taxes provided in subpart A (section 901 and following), part III, subchapter N, chapter 1 of the Code, may ordinarily be taken either in the return for the year in which the taxes accrued or in which the taxes were paid, dependent upon whether the accounts of the taxpayer are kept and his returns filed using an accrual method or using the cash receipts and disbursements method. Section 905(a) allows the taxpayer, at his option and irrespective of the method of accounting employed in keeping his books, to take such credit for taxes as may be allowable in the return for the year in which the taxes accrued. An election thus made under section 905(a) (or under the corresponding provisions of prior internal revenue laws) must be followed in returns for all subsequent years, and no portion of any such taxes accrued in a year in which a credit is claimed will be allowed as a deduction from gross income in any year. See also §1.905–4.

(b) *Foreign income subject to exchange controls.* If, however, under the provisions of the regulations under section 461, an amount otherwise constituting gross income for the taxable year from sources without the United States is, owing to monetary, exchange, or other restrictions imposed by a foreign country, not includible in gross income of the taxpayer for such year, the credit for income taxes imposed by such foreign country with respect to such amount shall be taken proportionately in any subsequent taxable year in which such amount or portion thereof is includible in gross income.

§1.905–2 Conditions of allowance of credit.

(a) *Forms and information.* (1) Whenever the taxpayer chooses, in accordance with paragraph (d) of §1.901–1, to claim the benefits of the foreign tax credit, the claim for credit shall be accompanied by Form 1116 in the case of an individual or by Form 1118 in the case of a corporation.

(2) The form must be carefully filled in with all the information called for and with the calculations of credits indicated. Except where it is established to the satisfaction of the district director that it is impossible for the taxpayer to furnish such evidence, the taxpayer must provide upon request the receipt for each such tax payment if credit is sought for taxes already paid

or the return on which each such accrued tax was based if credit is sought for taxes accrued. The receipt or return must be either the original, a duplicate original, or a duly certified or authenticated copy. The preceding two sentences are applicable for returns whose original due date falls on or after January 1, 1988. Any additional information necessary for the determination under part I (section 861 and following), subchapter N, chapter 1 of the Code, of the amount of income derived from sources without the United States and from each foreign country shall, upon the request of the district director, be furnished by the taxpayer. If the taxpayer upon request fails without justification to furnish any such additional information which is significant, including any significant information which he is requested to furnish pursuant to §1.861–8(f)(5) as proposed in the FEDERAL REGISTER for November 8, 1976, the District Director may disallow the claim of the taxpayer to the benefits of the foreign tax credit.

(b) *Secondary evidence.* Where it has been established to the satisfaction of the District Director that it is impossible to furnish a receipt for such foreign tax payment, the foreign tax return, or direct evidence of the amount of tax withheld at the source, the District Director, may, in his discretion, accept secondary evidence thereof as follows:

(1) *Receipt for payment.* In the absence of a receipt for payment of foreign taxes there shall be submitted a photostatic copy of the check, draft, or other medium of payment showing the amount and date thereof, with certification identifying it with the tax claimed to have been paid, together with evidence establishing that the tax was paid for taxpayer's account as his own tax on his own income. If credit is claimed on an accrual method, it must be shown that the tax accrued in the taxable year.

(2) *Foreign tax return.* If the foreign tax return is not available, the foreign tax has not been paid, and credit is claimed on an accrual method, there shall be submitted—

(i) A certified statement of the amount shall be submitted—

(ii) Excerpts from the taxpayer's accounts showing amounts of foreign income and tax thereon accrued on its books.

(iii) A computation of the foreign tax based on income from the foreign country carried on the books and at current rates of tax to be established by data such as excerpts from the foreign law, assessment notices, or other documentary evidence thereof.

(iv) A bond, if deemed necessary by the District Director, filed in the manner provided in cases where the foreign return is available, and

(v) In case a bond is not required, a specific agreement wherein the taxpayer shall recognize its liability to report the correct amount of tax when ascertained, as required by the provisions of section 905 (c).

If at any time the foreign tax receipts or foreign tax returns become available to the taxpayer, they shall be promptly submitted to the district director.

(3) *Tax withheld at source.* In the case of taxes withheld at the source from dividends, interest, royalties, compensation, or other form of income, where evidence of withholding and of the amount withheld cannot be secured from those who have made the payments, the district director may, in his discretion, accept secondary evidence of such withholding and of the amount of the tax so withheld, having due regard to the taxpayer's books of account and to the rates of taxation prevailing in the particular foreign country during the period involved.

(c) *Credit for taxes accrued but not paid.* In the case of a credit sought for a tax accrued but not paid, the district director may, as a condition precedent to the allowance of a credit, require a bond from the taxpayer, in addition to Form 1116 or 1118. If such a bond is required, Form 1117 shall be used by an individual or by a corporation. It shall be in such sum as the Commissioner may prescribe, and shall be conditioned for the payment by the taxpayer of any amount of tax found due upon any redetermination of the tax made necessary by such credit proving incorrect, with such further conditions as the district director may require. This bond shall be executed by the taxpayer, or the agent or representative of the

taxpayer, as principal, and by sureties satisfactory to and approved by the Commissioner. See also 6 U.S.C. 15.

[T.D. 6500, 25 FR 11910, Nov. 26, 1960, as amended by T.D. 7292, 38 FR 33300, Dec. 3, 1973; 38 FR 34802, Dec. 19, 1973; T.D. 7456, 42 FR 1214, Jan. 6, 1977; T.D. 8210, 53 FR 23613, June 23, 1988; T.D. 8412, 57 FR 20653, May 14, 1992; T.D. 8759, 63 FR 3813, Jan. 27, 1998]

§ 1.905–3T Adjustments to the pools of foreign taxes and earnings and profits when the allowable foreign tax credit changes (temporary).

(a) *Foreign tax redeterminations subject to sections 985 through 989 of the Internal Revenue Code.* This section applies to a foreign tax redetermination that occurs in a taxpayer's taxable year beginning after December 31, 1986 with respect to—

(1) Tax that is paid or accrued by or on behalf of a taxpayer (including taxes paid or accrued prior to January 1, 1987), or

(2) Tax that is deemed paid or accrued by a taxpayer under section 902 or section 960 with respect to earnings and profits of a foreign corporation accumulated in taxable years of the foreign corporation beginning after December 31, 1986.

(b) *Currency translation rules*—(1) *Accrual of foreign tax.* Accrued and unpaid foreign tax liabilities denominated in foreign currency, as determined under foreign law, shall be translated into dollars at the exchange rate as of the last day of the taxable year of the taxpayer.

(2) *Payments of foreign tax.* Foreign tax liabilities denominated in foreign currency shall be translated into dollars at the rate of exchange for the date of the payment of the foreign tax. Tax withheld in foreign currency shall be translated into dollars at the rate for the date on which the tax is withheld. Estimated tax paid in foreign currency shall be translated into dollars at the rate for the date on which the estimated tax payment is made.

(3) *Refunds of foreign tax.* A refund of foreign tax shall be translated into dollars using the exchange rate for the date of the payment of the foreign taxes. If a refund of foreign tax relates to foreign taxes paid on more than one date, then the refund shall be deemed to be derived from, and shall reduce, the last payment of foreign taxes first, to the extent thereof. See § 1.905–3T(d)(3) relating to the method of adjustment of a foreign corporation's pools of earnings and profits and foreign taxes.

(4) *Allocation of refunds of foreign tax.* Refunds of foreign tax shall be allocated to the same separate category as foreign taxes to which the refunded taxes relate. Refunds are related to foreign taxes of a separate category if the foreign tax that was refunded was imposed with respect to that separate category. See section 904(d) and § 1.904–6 concerning the allocation of taxes to separate categories of income. Earnings and profits of a foreign corporation in the separate category to which the refund relates shall be increased to reflect the foreign tax refund.

(5) *Basis of foreign currency refunded.* A recipient of a refund of foreign tax shall detemine its basis in the currency refunded under the following rules.

(i) If the functional currency of the qualified business unit (as defined in section 989 and the regulations thereunder, hereinafter ''QBU'') that paid the tax and received the refund is the United States dollar or the person receiving the refund is not a QBU, then the recipient's basis in the foreign currency refunded shall be the dollar value of the refund determined, under paragraph (b)(2) of this section, on the date the foreign tax was paid.

(ii) If the functional currency of the QBU receiving the refund is not the United States dollar and is different from the currency in which the foreign tax was paid, then the recipient's basis in the foreign currency refunded shall be equal to the functional currency value of the non-functional refunded translated into functional currency at the exchange rate between the functional currency and the non-functional currency, determined under paragraph (b)(2) of this section, on the date the foreign tax was paid.

(iii) If the functional currency of the QBU receiving the refund is the currency in which the refund was made, then the recipient's basis in the currency received shall be the amount of the functional currency received.

For purposes of determining exchange gain or loss on the initial payment of