

time in the taxable year more than 50 percent in value of the outstanding stock of the foreign corporation be owned, directly or indirectly, by or for not more than five individuals who are citizens or residents of the United States, herein referred to as *United States group*. For the purpose of the requirement under section 552(a)(2), section 554 provides that the ownership of the stock must be determined under the rules prescribed by section 544 (relating to rules for determining stock ownership in the case of personal holding companies generally). Accordingly, section 544 and §§ 1.544-1 through 1.544-7 are applicable for purposes of section 552(a)(2) and this section as if each reference in section 544 and §§ 1.544-1 through 1.544-7 to a personal holding company or to part II (section 541 and following), subchapter G, chapter 1 of the Code, was a reference to a foreign personal holding company or to part III (section 551 and following), subchapter G, chapter 1 of the Code, as the case may be.

(b) It is necessary to consider any change in the stock outstanding during the taxable year, whether in the number of shares or classes of stock, or in the ownership thereof, since a corporation comes within the classification if the statutory conditions with respect to stock ownership are present at any time during the taxable year.

(c) In determining whether the statutory conditions with respect to stock ownership are present at any time during the taxable year, the phrase *in value* shall, in the light of all the circumstances, be deemed the value of the corporate stock outstanding at such time (not including treasury stock). This value may be determined upon the basis of the company's net worth, earning and dividend paying capacity, appreciation of assets, together with such other factors as have a bearing upon the value of the stock. If the value of the stock which is used is greatly at variance with that reflected by the corporate books, the evidence of such value should be filed with the return. In any case where there are two or more classes of stock outstanding, the total value of all the stock should be allocated among the different classes

according to the relative value of each class therein.

§ 1.552-4 Certain excluded banks.

(a) A corporation is excluded from the definition of *foreign personal holding company* if it is organized and doing business under the banking and credit laws of a foreign country and if it establishes to the satisfaction of the Commissioner that it was not formed or availed of for the purpose of evading or avoiding United States income taxes which would otherwise be imposed on its shareholders. If this is established, the Commissioner, or such other official to whom authority may be delegated, will certify, by letter to the corporation, that it is not a foreign personal holding company.

(b) An application for certification under section 552(b)(2) shall be made in writing to the Commissioner of Internal Revenue, Washington DC 20225, Attention: Director of International Operations. A separate application shall be filed for each taxable year for which certification is requested, and the application shall be accompanied by a completed Form 958 for the taxable year. See section 6035. The following information shall be set forth in, or submitted with, the application:

(1) A complete reference to the banking or credit laws of the foreign country under which the corporation operates;

(2) A statement as to the extent of the corporation's business in receiving deposits and making loans and discounts and similar banking and credit operations;

(3) A statement as to the extent of the operations of the corporation other than such banking and credit operations;

(4) A statement as to whether the banking and credit operations of the corporation are customary for it;

(5) A statement setting forth the degree and manner of supervision exercised over it by the foreign government under its banking and credit laws; a copy (in English) of the corporation's last annual financial statement, as submitted to the Government authority having jurisdiction over it, shall be submitted with the application;

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(6) A statement setting forth the business reasons of the corporation for not distributing the amount which would be its undistributed foreign personal holding company income if the corporation were not excluded under section 552(b);

(7) A statement setting forth the extent of the corporation's profits which must be retained as reserves under the foreign law;

(8) A statement setting forth the date or dates when the corporation reasonably expects to distribute its undistributed foreign personal holding company income for the taxable year;

(9) A statement setting forth the name and address of each of the individuals described in section 552(a)(2), the extent of their stock ownership in the corporation, and the amount of distributions or other payments to such stockholders, including, but not limited to, dividends, compensation, interest, and rents; and

(10) Any other facts or information the corporation may wish to submit to show that it was not formed or availed of for the purpose of evading or avoiding United States income taxes which would otherwise be imposed on its shareholders.

The corporation shall also furnish such other information requested as necessary by the Director of International Operations. The application for certification, together with the information required by this paragraph, should be filed within 60 days after the close of the taxable year of the corporation or before November 9, 1958, whichever is later. However, if the corporation is unable, for good cause, to submit the application for certification within such 60-day period, additional time may be granted by the Director of International Operations upon receipt of a request from the corporation setting forth the reasons for such request.

§ 1.552-5 United States shareholder of excluded bank.

A copy of the certification issued to an excluded bank under section 552(b)(2) and § 1.552-4 shall be filed with, and made a part of, the income tax return for the taxable year of each United States shareholder of such foreign corporation, if he has been a

shareholder of such corporation for any part of such year. If the certificate has not been issued at the time the return of the United States shareholder is filed, the shareholder shall compute the tax on his return by treating the bank as a foreign personal holding company. If a certificate is issued after the return is filed, the United States shareholder may file a claim for refund or an amended return, and shall attach thereto a copy of the certification.

§ 1.553-1 Foreign personal holding company income.

Foreign personal holding company income shall consist of the items defined under section 543 and §§ 1.543-1 and 1.543-2, relating to personal holding company income, with the following exceptions:

(a) The entire amount received as *interest*, whether or not treated as rent, shall be considered to be foreign personal holding company income. Thus, the exception in the second sentence of section 543(a)(1) and paragraph (b)(2) of § 1.543-1 (relating to interest treated as rent under section 543(a)(7) and paragraph (b)(10) of § 1.543-1), is inapplicable for the purpose of determining foreign personal holding company income. Similarly, section 543(a)(7) and paragraph (b)(10) of § 1.543-1 are applied for this purpose without regard to the interest described in that section.

(b)(1) The entire amount received as *royalties*, whether or not mineral, oil, or gas royalties, or copyright royalties, shall be considered to be foreign personal holding company income. Thus, subparagraphs (A) and (B) of section 543(a)(8) and paragraph (b)(11)(i) (a) and (b) of § 1.543-1 (relating to mineral, oil, or gas royalties), and subparagraphs (A), (B), and (C) of section 543(a)(9) and paragraph (b)(12)(ii) of § 1.543-1 (relating to copyright royalties), are inapplicable for the purpose of determining foreign personal holding company income.

(2) In computing foreign personal holding company income, the first sentence of paragraph (b)(11)(ii) of § 1.543-1 shall apply to overriding royalties received from the sublessee by the operating company which originally leased and developed the natural resource