PRESENT LAW PROVISIONS ADDRESSED TO DESIGNATED FOREIGN COUNTRIES AND CERTAIN ORGANIZATIONS

Scheduled for a Public Hearing
Before the
HOUSE WAYS AND MEANS COMMITTEE
SUBCOMMITTEE ON OVERSIGHT
on November 4, 2015

Prepared by the Staff
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INTRODUCTION AND SUMMARY

The Subcommittee on Oversight of the House Ways and Means Committee has scheduled a public hearing for November 4, 2015 on the authority of the President to waive with respect to Iran certain provisions of the Internal Revenue Code of 1986, as amended (the "Code"), that apply to income and taxes attributable to countries that satisfy one or more foreign-policy-related criteria. This document,[1] prepared by the staff of the Joint Committee on Taxation, includes an overview of certain significant features of the U.S. income tax rules applicable to U.S. persons with foreign activities and a description of present law provisions that are directed to activities in designated foreign countries.

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[1] This document may be cited as follows: Joint Committee on Taxation, *Present Law Provisions Addressed to Designated Foreign Countries and Certain Organizations* (JCX-138-15), November 3, 2015. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

I. U.S. TAXATION OF U.S. PERSONS WITH FOREIGN ACTIVITIES

A. In General

The United States taxes all income of domestic corporations and individuals who are U.S. citizens or residents (collectively referred to below as "U.S. persons") whether the income is derived in the United States or abroad.[2] Foreign income of U.S. persons is taxed under the same general rules as apply to U.S. income of U.S. persons, but the U.S. scheme for taxing cross-border income also has additional rules directed at matters that do not arise in the purely domestic context. Another country may tax the foreign income of a U.S. person. The United States relieves potential double taxation by means of a foreign tax credit and, in the case of a U.S. citizen or resident who lives abroad, an election (as an alternative to the foreign tax credit) to exclude a limited amount of income earned abroad. A U.S. person may seek to avoid or delay ("defer") U.S. taxation of foreign income by routing the income through a corporation organized abroad rather than deriving the income directly. The special anti-deferral regimes of subpart F and the passive foreign investment company rules address this avoidance or deferral by taxing some income of a U.S.-owned foreign corporation at the time the corporation derives the income (or, in the case of the passive foreign investment company rules, imposing an interest charge on certain distributions). A U.S. person's U.S. tax liability may vary depending on whether the income has a U.S. or foreign source. Category-by-category rules determine whether a particular item of income is U.S.-source or foreign-source. This section gives an overview of the foreign tax credit rules, the foreign earned income exclusion, the anti-deferral regimes, and the source-of-income rules.

B. Foreign Tax Credit

The United States allows U.S. citizens and domestic corporations a credit against U.S. tax for foreign income tax paid or accrued during the taxable year.[3] The foreign tax credit is limited in several ways. The credit is allowed only for foreign income tax, not for other taxes such as sales or value-added tax, property tax, social security tax, or tax paid in exchange for a specific economic benefit such as the right to extract commodities.[4] The credit is limited to the amount of U.S. tax imposed on foreign-source income, and this limitation applies separately to specific categories of income.[5]

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[2] A corporation is domestic if it is created or organized under the laws of a U.S. State. Code section 7701(a)(4). Unless otherwise noted, section references below are to sections of the Code.

[3] Sec. 901(a), (b)(1). A taxpayer must elect the foreign tax credit. If a taxpayer elects the foreign tax credit, it is not allowed a deduction for foreign taxes. Sec. 275(a)(4).

[4] The foreign tax credit also is allowed for some foreign taxes paid in lieu of a tax on net income. A common "in-lieu-of" tax for which the foreign tax credit is allowed is a foreign withholding tax imposed on the gross amount of a dividend, interest, or other payment. Sec. 903.

[5] Sec. 904(a), (d).

A domestic corporation is allowed a foreign tax credit not only for foreign tax paid directly, but also for foreign tax that a domestic corporation is deemed to have paid indirectly through a foreign subsidiary corporation.[6] A domestic corporation that owns at least 10 percent of the voting stock of a foreign corporation is allowed this credit, referred to as the indirect or deemed-paid credit, when it receives a dividend from the foreign corporation. The amount of the tax deemed paid by a domestic corporation in respect of a dividend (and, therefore, allowed as a credit under section 901, subject to applicable limitations) equals the same percentage of the total post-1986 foreign income taxes paid by the foreign corporation (and not attributable to dividends paid in prior years) as the amount of the dividend bears to the amount of the corporation's post-1986 undistributed earnings.[7] A domestic corporation must include in income the amount of tax that it is deemed to have paid.[8]

In some circumstances (described below) a domestic corporation that owns stock of a foreign corporation must include in income amounts derived by the foreign corporation even if the domestic corporation does not receive a dividend from the foreign corporation. In these circumstances, the domestic corporation is allowed a credit for foreign tax paid on the foreign corporation's earnings that the domestic corporation must include in income.[9]

The foreign tax credit rules include a number of limitations in addition to the basic section 904 limitations described above. For example, if there is a "foreign tax credit splitting event" with respect to a foreign income tax, a U.S. person is not allowed a credit for the foreign income tax until the taxable year in which the U.S. person takes into account the related income.[10] Other special limitations apply to foreign income tax paid on foreign oil and gas income.[11] Under rules described in the next section of this document, no foreign tax credit is allowed for tax paid to certain designated countries.[12]

C. Foreign Earned Income Exclusion

An individual who is a U.S. citizen or resident and satisfies requirements related to living in a foreign country may elect to exclude from gross income a limited amount of income earned abroad ("foreign earned income") and employer-provided housing costs ("housing cost

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[6] Sec. 902.

[7] Sec. 902(a).

[8] Sec. 78.

[9] Secs. 960, 1293(f).

[10] Sec. 909.

[11] Sec. 907.

[12] Secs. 901(j), 908.

amount").[13] No deduction or credit is allowed for foreign tax properly allocable to an individual's excluded foreign earned income or housing cost amount.[14]

An individual is eligible for the foreign earned income and housing cost amount exclusions (is a "qualified individual") only if the individual's tax home is in a foreign country and (1) in the case of a U.S. citizen, the individual is a bona fide resident of one or more foreign countries for an uninterrupted period that includes an entire taxable year, or (2) in the case of a U.S. citizen or resident, the individual is physically present in one or more foreign countries on at least 330 days during any period of 12 consecutive months.[15]

The maximum amount of the foreign earned income exclusion for a taxable year beginning in 2015 is $100,800.[16] The maximum housing cost amount for taxable year 2015 is the excess of (a) the individual's housing expenses for the year, to the extent the expenses do not exceed the limitation described next, over (b) 16 percent of the maximum foreign earned income exclusion amount (in 2015, 16 percent of $100,800, or $16,128).[17] The maximum amount of housing expenses that an individual may take into account is (1) 30 percent of the maximum foreign earned income exclusion amount (in 2015, 30 percent of $100,800, or $30,240) or a different amount for a particular area under adjustments provided by the Treasury Secretary on the basis of geographic differences in housing costs relative to U.S. housing costs.[18] Under the general 30-percent rule for housing expenses that may be taken into account, the maximum housing cost amount is $14,112 (30 percent of $100,800 less 16 percent of $100,800).

The amount by which an individual's tax liability is reduced as a result of the foreign earned income and housing cost amount exclusion is determined by treating the amount so excluded as if it would have been taxed at the lowest rates applicable to that amount under the individual income tax rate tables prescribed in section 1(a).[19]

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[13] Sec. 911. An individual who pays the housing cost amount rather than having it paid by an employer may treat the housing cost amount as a deduction. See sec. 911(c)(4). The sum of the foreign earned income exclusion and housing cost amount exclusion and deduction may not exceed an individual's foreign earned income. Sec. 911(d)(7).

[14] Sec. 911(d)(6).

[15] Sec. 911(d)(1).

[16] Sec. 911(d)(2); Rev. Proc. 2014-61, 2014-47 I.R.B. 860 (Nov. 17, 2014). This amount is adjusted annually for inflation. See sec. 911(d)(2)(D).

[17] Sec. 911(c)(1).

[18] Sec. 911(c)(2). For adjustments for 2015, see IRS Notice 2015-33, 2015-18 I.R.B. 934 (May 4, 2015). The largest adjustment for 2015 is for Hong Kong. The housing expenses that may be taken into account there are $114,300.

[19] Sec. 911(f). This rule is colloquially referred to as a "stacking" rule because it stacks the foreign earned income and housing cost amount exclusion at the bottom rate brackets.

Special rules make the foreign earned income and housing cost amount exclusions unavailable in relation to certain restricted countries.[20]

D. Subpart F and the PFIC Rules

As described previously, the United States taxes U.S. persons on all income derived in the United States and abroad. By contrast, a foreign person is generally subject to U.S. taxation only on income derived in the United States. Consequently, if a U.S. person derives foreign income through a foreign corporation rather than directly, the U.S. person generally is not liable for U.S. tax on the income until it receives a distribution out of the foreign corporation's earnings. When a U.S. person receives a dividend from a foreign corporation, that person is taxed under the rules normally applicable to dividends. If the U.S. person is a corporation that owns at least 10-percent of the voting stock of the foreign corporation, that domestic corporation is allowed an indirect foreign tax credit for foreign income tax associated with the earnings out of which the dividend is paid. Because the U.S. rules generally allow U.S. persons not to pay U.S. tax on earnings of foreign corporations until the earnings are distributed as a dividend, these rules are said to allow "deferral" of U.S. taxation.

Two sets of U.S. rules impose current rather than deferred U.S. taxation of foreign earnings derived by U.S. persons through foreign corporations. Under subpart F, a U.S. person (a "United States shareholder") who owns at least 10 percent of the voting stock of a controlled foreign corporation ("CFC") generally must include in income each year that person's proportionate share of the CFCs subpart F income.[21]

A controlled foreign corporation generally is a foreign corporation more than 50 percent of the voting power or value of the stock of which is owned, directly or indirectly, or is considered as owned (by application of constructive ownership rules), by five or fewer United States shareholders.[22]

Subpart F income is composed of several categories of earnings, primarily investment income ("foreign personal holding company income") and related-party sales and services income ("foreign base company sales income" and "foreign base company services income"), that are thought to be easily migrated from the United States to a low-tax foreign country.[23] Subpart F income also includes more specialized categories such as insurance income, foreign base company oil related income, and income derived in designated countries.[24]

[20] Sec. 911(d)(8). These special rules are described in the next section of this document.

[21] Sec. 951(a).

[22] Sec. 957(a).

[23] Sec. 952(a). Foreign personal holding company income and foreign base company sales and services income are subcategories of the larger subpart F category foreign base company income. See secs. 952(a)(2), 954.

[24] Secs. 952(a)(1), (3), (5), 953, 954(a)(5), (g). The sections 952(a)(3) and (5) rules for income derived from designated countries are described in the next section of this document.

There are a number of exceptions for earnings that would otherwise be subpart F income. For example, the foreign personal holding company income rules include exceptions for certain dividends, interest, rents, and royalties received from both related and unrelated parties and for amounts derived by eligible CFCs in the active conduct of a banking, finance, or insurance business.[25]

Under the passive foreign investment company ("PFIC") rules, a U.S. person who owns stock of a PFIC is subject to U.S. tax in respect of the earnings of the PFIC under one of three alternative regimes intended to eliminate the benefit of deferral.[26] One regime imposes tax with an interest charge on certain abnormally large earnings distributions by the PFIC.[27] Under a second regime, the qualified electing fund rules, a U.S. shareholder of a PFIC is taxed on its proportionate share of the earnings of the PFIC annually.[28] The third regime taxes a U.S. person who owns marketable stock of a PFIC annually based on the change in value of the stock.[29]

A PFIC generally is any foreign corporation if (1) 75 percent or more of the gross income of the corporation for the taxable year is passive income or (2) the average portion of the corporation's assets that produce passive income or are held for the production of passive income during the year is at least 50 percent.[30] For this purpose passive income is defined by reference to foreign personal holding company income under subpart F.[31]

A foreign corporation that would otherwise be a PFIC with respect to a U.S. shareholder is not a PFIC with respect to that shareholder during any post-1997 period during which the U.S. shareholder is a United States shareholder of the corporation and the corporation is a CFC.[32]

E. Source of Income

Detailed rules determine whether an item of income has a U.S. or foreign source.[33] For a U.S. person, whether income is U.S.-source or foreign-source matters because the foreign tax

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[25] Sec. 954(c)(2), (3), (6), (h), (i). The "CFC look-through" exception (section 954(c)(6)) and the active finance (section 954(h)) and insurance (section 954(i)) exceptions were enacted as temporary provisions and have been extended a number of times, most recently through the end of 2014.

[26] Secs. 1291-1298.

[27] Sec. 1291.

[28] Secs. 1293-1295.

[29] Sec. 1296.

[30] Sec. 1297(a).

[31] Sec. 1297(b).

[32] Sec. 1298(d).

[33] Secs. 861-865.

credit generally is allowed to offset U.S. tax only for foreign tax paid on foreign-source income. For a non-U.S. person, the source of income matters because a non-U.S. person generally is subject to U.S. tax only on U.S.-source income.

The source of some items of income is based on the residence of the payor of the income. Dividends and interest generally are U.S.-source if the payor is a U.S. person and generally are foreign-source if the payor is a non-U.S. person.[34] The source of other items of income, principally capital gain from the sale of personal property, is the place of residence of the recipient, not the payor, of the income.[35] The source of income from the performance of personal services is the place of performance of the services.[36] The source of rental and royalty income is the location or place of use of the property for which the income is received.[37]

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[34] Secs. 861(a)(1), (2), 862(a)(1), (2).

[35] Sec. 865(a). Several rules change this residence-based source rule for some kinds of gains, such as income from the sale of inventory property. See sec. 865(b).

[36] Secs. 861(a)(3), 862(a)(3).

[37] Secs. 861(a)(4), 862(a)(4).

II. ANTI-TERROR AND OTHER FOREIGN POLICY PROVISIONS IN THE U.S. TAX CODE

A. Overview

The Code contains several provisions that apply to designated countries for both tax and non-tax policy reasons. Among other things, these provisions deny foreign tax credits, potential tax deferral, and other taxpayer-favorable rules to taxpayers with some connection to targeted jurisdictions. More detail is provided below.

B. Special Foreign Tax Credit and Subpart F Rules

Section 901(j)

No foreign tax credit is allowed for taxes paid or accrued (or deemed paid or accrued) to certain countries if the taxes are with respect to income attributable to a period in which the country satisfies one or more criteria for applicability of section 901(j). A foreign country is a section 901(j) country if: (i) the United States does not recognize the foreign government (unless the foreign government is otherwise eligible to purchase defense articles or services under the Arms Export Control Act); (ii) the United States has severed diplomatic relations with the country; (iii) the United States has not severed diplomatic relations, but does not, in fact, conduct such diplomatic relations with the country; or (iv) the Secretary of State has designated that the foreign country repeatedly provides support to acts of international terrorism pursuant to section 6(j) of the Export Administration Act of 1979. A taxpayer may deduct taxes for which a credit is disallowed and the taxes are not included in income under section 78.[38]

As illustrated in Table 1, which identifies countries to which section 901(j) has applied after its effective date of January 1, 1987, section 901(j) currently applies to Cuba, Iran, North Korea, Sudan, and Syria.[39] Section 901(j) applies until the Secretary of State certifies that the country has ceased to meet any of the above conditions.[40]

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[38] Sec. 901(j)(3).

[39] Rev. Rul. 2005-3, 2005-1 C.B. 334.

[40] Sec. 901(j)(2)(B)(ii). Subject to a 30-day advance notice requirement, the President is authorized to waive application of section 901(j) under section 901(j)(5).

As of the date of publication, the Secretary of State has not certified to the Secretary of the Treasury that section 901(j) no longer applies to Cuba. The Department of State has, however, published statements declaring re-establishment of diplomatic relations with Cuba, and rescission of Cuba as a state sponsor of terrorism. Department of State, *Re-Establishment of Diplomatic Relations with Cuba*, July 6, 2015, available at http://www.state.gov/r/pa/prs/ps/2015/07/244623.htm; Department of State, *Rescission of Cuba as a State Sponsor of Terrorism*, May 29, 2015, available at http://www.state.gov/r/pa/prs/ps/2015/05/242986.htm.

Table 1.−Application of Section 901(j)
(Rev. Rul. 2005-3)[41]

Country	Starting Date	Ending Date
Afghanistan	January 1, 1987	August 4, 1994
Albania	January 1, 1987	March 15, 1991
Angola	January 1, 1987	June 18, 1993
Cambodia	January 1, 1987	August 4, 1994
Cuba	January 1, 1987	Still in effect
Iran	January 1, 1987	Still in effect
Iraq	February 1, 1991	June 27, 2004
Libya	January 1, 1987	December 9, 2004
North Korea	January 1, 1987	Still in effect
South Africa	January 1, 1988	July 10, 1991
Sudan	February 12, 1994	Still in effect
Syria	January 1, 1987	Still in effect
Vietnam	January 1, 1987	July 21, 1995
People's Democratic Republic of Yemen	January 1, 1987	May 22, 1990

The section 904 foreign tax credit limitation rules and the sections 902 and 960 indirect foreign tax credit rules apply separately with respect to income from sources within a country attributable to a period during which section 901(j) applies to that country.[42]

In the case of a controlled foreign corporation, all income derived from a section 901(j) country during the sanction period is treated as subpart F income and currently taxed to United States shareholders.[43] For the purposes of this rule, under regulations income is treated as "derived" from a country according to the normal U.S. sourcing rules.[44] Deductions (including taxes) properly allocable to such income reduce the amount treated as subpart F income.[45]

[41] See also IRS Publication 514 (2014), Foreign Tax Credit for Individuals, available at https://www.irs.gov/publications/p514/index.html.

[42] Sec. 901(j)(1)(B).

[43] Sec. 952(a)(5).

[44] Treas. Reg. 1.863-6.

[45] Sec. 952(a) (last sentence).

Members of Congress who introduced earlier versions of current section 901(j)[46] questioned whether the benefits of foreign tax credits and deferral should be available to companies whose activities were seen as indirectly providing support for state sponsored terrorism. A goal of these members of Congress was to prevent U.S. tax rules from providing what were viewed as tax advantages to companies for their operations in countries designated as sponsoring terrorism. Speaking in favor of the proposal, members of Congress specifically referred to the governments of Libya and Syria as targeted.[47] Beyond addressing state sponsored terrorism, members of Congress expanded the provision to apply to countries which the United States does not recognize or with whom the United States has severed diplomatic relations.[48]

Presidential waiver

In 2000, Congress enacted a rule to provide the President authority to waive foreign tax credit denials and subpart F inclusions under sections 901(j) and 952(a)(5).[49] To make a waiver, the President must (i) determine that a waiver is in the national interest of the United States and that it will expand trade and investment opportunities for U.S. companies; and (ii) report such waiver, and reasons for its determination, to Congress not less than 30 days before the date on which a waiver is granted.[50]

In 2004 the President granted a waiver for Libya.[51]

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[46] An earlier version of current section 901(j) appears in Senate Amendment No. 2256 to H.J. Res. 668, A Joint Resolution Increasing the Statutory Limit on the Public Debt (1986). Congress adopted current section 901(j) as part of the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, sec. 8041(a).

[47] 145 Cong. Rec. S. 13729, November 3, 1999.

Senator Grassley: "…[A] glaring example of the unintended effect of these tax credits can be seen in Libya, where these incentives benefited terrorists more than American citizens. Last year, taxes from American corporations reportedly amounting to $2 billion were paid to Quadhafi, which he used, I feel comfortable saying, to bankroll his State-sponsored terrorism…how can we in Congress stand by and allow American companies and individuals to help prop up these terrorist regimes? I say we cannot permit some Americans to profit from revenues used to kill and terrify other Americans."

Senator Hawkins: "It is unconscionable that we support such international pariahs through our Tax Code…We should not encourage, through our Tax Code, what we discourage through diplomacy."

[48] Senator D'Amato: "…[F]our countries – Albania, Angola, Mongolia, and North Korea – are withheld United States diplomatic recognition. Cuba, Iran, Cambodia, South Yemen, and Vietnam are nations with which we have severed relations…[T]he State Department has listed five nations which support international terrorism: Libya, Iran, Syria, Cuba, and South Yemen. These 11 pariah nations are eligible to benefit economically from tax breaks provided by an indiscriminate application of the U.S. Tax Code…We believe the nations listed above should no longer benefit from this preferential tax treatment." 145 Cong. Rec. S. 13729, November 3, 1999.

[49] Trade and Development Act of 2000, Pub. L. No. 106-200, sec. 601(a).

[50] Sec. 901(j)(5).

[51] Presidential Determination 2004-48, 69 FR 61703 (October 2004); Presidential Determination 2005-12; Rev. Rul. 2005-3, 2005-1 C.B. 334. The United States had previously ceased to conduct diplomatic relations with

Legislative history related to section 901(j)(5) provides little information about Congress's particular policy concerns in enacting the provision.[52] One year before the enactment of the provision, the House Ways and Means Committee reported to the full House a bill that included a similar provision. This earlier provision provided that section 901(j) would no longer apply with respect to a foreign country if the President determined that the application of section 901(j) to such foreign country was not in the national interests of the United States.[53] The committee described the rationale for the provision in the following manner:

> The Committee has observed that the automatic denial of foreign tax credits under section 901(j) with respect to a foreign country may in certain cases conflict with other policy interests of the United States. The Committee believes that it is appropriate to provide a mechanism for the waiver of the denial of foreign tax credits in certain cases.[54]

Anti-boycott rules

A taxpayer who participates in or cooperates with an international boycott may suffer reduced foreign tax credits and have subpart F income in relation to taxes and income attributable to the country the government of which sponsors or supports an international boycott.

A person participates or cooperates with an international boycott when that person agrees, as a condition of doing business within a country, with its government, or with one of its nationals or companies, to do any of the following: (1) refrain from doing business with or in the country that is the target of the boycott, or with its nationals or companies; (2) refrain from doing business with a U.S. person engaged in trading with the country that is the target of the boycott; (3) refrain from doing business with any company owned or managed by individuals of a particular nationality, race or religion; (4) remove or refrain from choosing corporate directors who are of a particular nationality, race or religion; or (5) refrain from employing individuals of a particular nationality, race or religion. A person may also participate or cooperate in an international boycott when, as a condition of the sale of a product to a country's government, national or company, the person agrees to refrain from shipping or insuring a product on a carrier owned, leased, or operated by a person that does not participate in or cooperate with an international boycott.[55] There is a presumption that if a person or a member of a person's controlled group participates or cooperates with an international boycott during a taxable year, all of the person's or group's operations in connection with the boycotting country are connected

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Libya, and Libya was subject to sections 901(j) and 952(a)(5) as of January 1, 1987. The waiver is effective with respect to income attributable to the period beginning after December 9, 2004.

[52] The provision was included in section 601(a) of Pub. L. No. 106-200, the Trade and Development Act of 2000, but was not part of a bill for which a House or Senate committee report was published.

[53] H.R. 2488, sec. 910 (1999).

[54] House Ways and Means Committee Report to accompany H.R. 2488, Financial Freedom Act of 1999, H.R. Rep. No. 106-238, July 16, 1999, p. 256.

[55] Sec. 999(b)(3).

with the boycott. This presumption may be rebutted and an operation may be shown to be separate and not connected with the boycott. If a taxpayer controls a corporation, there is a presumption that participation or cooperation by the corporation is participation or cooperation by the taxpayer, and vice versa.[56] If any member of a controlled group participates in or cooperates with an international boycott, each member of the group is subject to the foreign tax credit denial rules.[57]

If the anti-boycott rules apply to a person, the allowable foreign tax credit is reduced by an amount equal to the amount of the credit otherwise allowed to the person multiplied by the "international boycott factor," which is a fraction that generally reflects the percentage of taxpayer's operations in the boycotting countries to worldwide operations.[58] A taxpayer may deduct taxes for which a credit is disallowed, and the taxes are not included in income under section 78.[59]

The Treasury Department publishes a list of countries that it believes may require participation in or cooperation with an international boycott. As of March 31, 2015, that list includes Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, United Arab Emirates, and Yemen.[60]

Income deemed connected with an international boycott is included in subpart F income.[61] The amount included is equal to all of the income of the CFC, less (1) the income attributable to earnings and profits of the CFC otherwise included in the gross income of a U.S. person under another category of subpart F income and (2) certain income taxed by the United States at regular rates because it is effectively connected to the conduct of a U.S. trade or business, multiplied by the international boycott factor.

C. Special Foreign Earned Income Exclusion Rules

The benefits of the foreign earned income exclusion rules are denied for individuals in certain foreign countries for which travel to the country, or any transaction in connection with travel, is restricted by regulations under the Trading with the Enemy Act or the International Emergency Economic Powers Act.[62] An individual in a restricted country is not treated as a bona fide resident of, or present in, a foreign country for any day on which the individual is present in that country during the period in which travel to the country, or any transaction in

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[56] Sec. 999(e)

[57] Sec. 908(a).

[58] Secs. 908(a), 999(c).

[59] Sec. 908(b).

[60] List of Countries Requiring Cooperation With an International Boycott, 80 FR 17152 (March 2015).

[61] Sec. 952(a)(3).

[62] Sec. 911(d)(8).

connection with such travel, is restricted. Income from sources within a restricted country attributable to services performed during the restricted period is not included in "foreign earned income." Any expenses for housing in a foreign country allocable to such period are not treated as "housing expenses" for the purposes of the exclusion. While the individual is present in the restricted country, the rule also excludes from the housing cost exclusion or deduction housing expenses of an individual's spouse or dependents in another country.

As illustrated in Table 2, these rules have applied to Cuba, Libya, and Iraq.

Table 2.−Application of Section 911(d)(8)
(Rev. Rul. 2005-3)

Country	Starting Date	Ending Date
Cuba	January 1, 1987	Still in effect
Libya	January 1, 1987	September 20, 2004
Iraq	August 2, 1990	July 29, 2004

D. Other Country-Specific Tax Rules

Tax responses to foreign discriminatory tax policies

Whenever the President proclaims that U.S. citizens or corporations are being subjected to discriminatory or extraterritorial taxes under the laws of any foreign country, certain rates of tax are doubled for each citizen or corporation of that particular foreign country.[63] The increase may not, however, increase the tax that would otherwise be imposed in excess of 80 percent of the foreign taxpayer's taxable income, computed without regard to certain deductions. Once triggered by Presidential proclamation, the doubled rates continue in effect until the taxable year after the President finds and proclaims that the foreign country's tax laws have removed the discriminatory and extraterritorial taxes on U.S. citizens and corporations.

If the President finds that (1) under the laws of a foreign country, U.S. citizens or corporations are being subjected to more burdensome taxes on foreign-source income than the taxes the U.S. imposes on such items to residents or corporations of that foreign country; (2) the foreign country has not revised or reduced such taxes after request to do so by the United States; and (3) it is in the public interest to apply pre-1967 tax provisions to residents or corporations of that foreign country, under section 896(a) the President may proclaim that the tax on U.S.-source income derived by those residents and corporations of the foreign country will be determined

[63] Sec. 891.

under more burdensome rules in effect before enactment of the provision.[64] The President has not invoked this rule to date.[65]

If the President finds that (1) under the laws of a foreign country, U.S. citizens or corporations are being subjected to a higher rate of tax on any item of income than are the nationals, residents, or corporations of such foreign country under similar circumstances; (2) the foreign country has not eliminated such higher effective tax rates after request to do so by the United States; and (3) it is in the public interest to adjust the U.S. effective rate of tax imposed on those nationals, residents, or corporations on such U.S.-source items, the President may adjust the tax rate imposed by the United States on any item of income derived from U.S. sources by a foreign national, resident, or corporation of such foreign country so that the effective rate is the same as that which is imposed by such foreign country on U.S. citizens or corporations. This adjustment may be made by disallowing a deduction, credit or exemption that would otherwise be available, or by increasing the otherwise applicable rate of tax.[66] The President has not invoked this rule to date.[67]

Tax responses to trade restrictions or discriminatory acts

If the President determines that a foreign country maintains nontariff trade restrictions which substantially burden U.S. commerce in a manner inconsistent with trade agreements, or engages in other acts unjustifiably restricting U.S. commerce, the President may by executive order require that property produced or manufactured in such foreign country use the straight-line recovery method under the Alternative Depreciation System (ADS).[68] Recovery periods under the straight-line method are generally longer than the usual recovery periods under the Accelerated Cost Recovery System (ACRS), which would be available otherwise.

E. Tax-Exempt Organizations

Organizations may not qualify as tax-exempt under section 501 if they are designated or otherwise individually identified as terrorist organizations or foreign terrorist organizations under the Immigration and Nationality Act; if they are identified pursuant to an executive order related to terrorism and issued under the International Emergency Economic Powers Act or the United Nations Participation Act for the purpose of imposing economic or other sanctions; or if they are identified pursuant to an executive order authorized under any federal law if the organization is designated or otherwise individually identified pursuant to such order as supporting or engaging

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[64] Sec. 896(a).

[65] Joel D. Kuntz and Robert J. Peroni, U.S. International Taxation (Thomson Reuters/WG&L, 2015, with updates through July 2015) (online version accessed on Checkpoint (www.checkpoint.riag.com), sec. C1.09[2][a].

[66] Sec. 896(b).

[67] Joel D. Kuntz and Robert J. Peroni, U.S. International Taxation (Thomson Reuters/WG&L, 2015, with updates through July 2015) (online version accessed on Checkpoint (www.checkpoint.riag.com), sec. C1.09[2][b].

[68] Sec. 168(g)(6).

in terrorist activity under the Immigration and Nationality Act, or as supporting terrorism as defined in the Foreign Relations Authorization Act, and such executive order refers to section 501(p).[69] Deductions for contributions to such organizations are also not allowable.[70]

[69] Sec. 501(p).

[70] Sec. 501(p)(4).