

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

(INTL-0848-89)

RIN 1545-A022

**Taxable Year of Certain Foreign Corporations Beginning After July 10, 1989**

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed Income Tax Regulations setting forth the required taxable year for specified foreign corporations for taxable years of these foreign corporations beginning after July 10, 1989. This action is necessary because of changes to the applicable tax law made by the Omnibus Budget Reconciliation Act of 1989, which added section 898 to the Internal Revenue Code. The regulations will give guidance on which foreign corporations must change their taxable year and how to effect the change in taxable year.

**DATES:** Written comments and requests for a public hearing must be received by March 6, 1993.

**ADDRESSES:** Send written comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC-CORP-T-R (INTL-0848-89), room 5228, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Bill Lundeen of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224 (Attention: CC-CORP-T-R (202-622-3870 (INTL-0848-89), not a toll-free call).

**SUPPLEMENTARY INFORMATION:**  
**A. Paperwork Reduction Act**

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collection of information in these proposed regulations is in §§ 1.563-3, 1.898-3 and 1.898-4. The Internal Revenue Service requires this information to verify compliance with section 898 of the Internal Revenue Code. The respondents will be certain United States shareholders of specified foreign corporations.

The estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on information as is available to the Internal Revenue Service. Individual respondents may require greater or lesser time, depending on their particular circumstances.

*Estimated total annual reporting burden:* 600 hours.

*Estimated burden per respondent:* varies from 5 hours to 1.5 hour, depending on individual circumstances, with an estimated average of 1 hour.

*Estimated number of respondents:* 600.

*Estimated frequency of responses:* Once every three years.

## B. Background

This document contains proposed regulations under sections 441, 442, 563 and 898 of the Internal Revenue Code (Code). Sections 1.898-1 through 1.898-4 are proposed to be effective for taxable years of specified foreign corporations beginning after July 10, 1989. However, §§ 1.898-3(a)(4) (regarding situations in which inconsistent majority U.S. shareholder years exist) and 1.898-3(a)(5)(iii) (regarding situations in which additional testing days are required) are proposed to be effective for taxable years beginning after [Insert Date 120 Days After Date of Publication of Final Regulations in the Federal Register], and section 1.898-4(b) is proposed to be effective for changes in the required year of a specified foreign corporation subsequent to its first taxable year beginning after July 10, 1989.

## C. Explanation of Provisions

### Introduction

Section 7401(a) of the Omnibus Budget Reconciliation Act of 1988, Pub. L. No. 101-239, 103 Stat. 2106 ("the Act"), added section 898 to the Code. The purpose of section 898 is to eliminate the deferral of income and, therefore, the understatement in income, by United States shareholders of certain controlled foreign corporations and foreign personal holding companies, referred to in the statute as specified foreign corporations. Deferral results when certain income

earned by these corporations is subject to United States income tax in a taxable year of the United States shareholder subsequent to the taxable year during which it was earned. The elimination of deferral is accomplished by requiring a specified foreign corporation to conform its taxable year to the required year, which is generally the majority U.S. shareholder year, for taxable years of specified foreign corporations beginning after July 10, 1989.

### Section 1.898-1

Section 1.898-1 provides the general rule that, for purposes of the Internal Revenue Code, the taxable year of any specified foreign corporation shall be the required year determined under section 898 (c) and § 1.898-3. In addition, § 1.898-1(b) sets forth the effective dates of the regulations under section 898.

The regulations at paragraph (c) exempt certain specified foreign corporations from section 898 in three circumstances. First, a specified foreign corporation is exempt from section 898 so long as its United States shareholders do not have any amount includible in gross income pursuant to section 951(a) and do not receive any actual or deemed distributions attributable to amounts described in section 553 with respect to that corporation. Once any United States shareholder has such amounts, however, section 898 applies to the specified foreign corporation. Second, a specified foreign corporation that is a foreign insurance company and elects to be treated as a domestic corporation pursuant to section 953(d) is exempt from section 898. Likewise, a specified foreign corporation described in section 1504(d) for which an election has been made to treat it as a domestic corporation is exempt from section 898.

### Section 1.898-2

Section 1.898-2(a) defines specified foreign corporation. Generally, a specified foreign corporation is defined to include controlled foreign corporations and foreign personal holding companies. However, specified foreign corporations include only those controlled foreign corporations and foreign personal holding companies that meet certain ownership requirements. Paragraphs (b)(1) and (b)(2) set forth the ownership requirements of a specified foreign corporation and paragraph (b)(3) defines United States shareholder for purposes of these rules. Paragraph (c) provides a special rule for foreign personal holding companies that are specified foreign corporations.

There is an inconsistency in the legislative history of section 898

between the Senate Print and the Conference Report. The conference agreement generally follows the Senate amendment, but misstates the Senate amendment in reporting that section 898 applies only to a controlled foreign corporation or foreign personal holding company, more than 50 percent of the total voting power or value of the U.S.-owned stock of which is treated as owned by a United States shareholder, and that section 898 takes into account only the taxable years of those United States shareholders (and certain related persons) in determining the majority U.S. shareholder year. The words "U.S.-owned" did not appear in the Senate amendment, which is the version of the bill that Congress enacted and which became public law. Accordingly, specified foreign corporations include controlled foreign corporations and foreign personal holding companies in which a United States shareholder owns (or is considered to own) more than 50 percent of the voting power of all classes of stock of the corporation entitled to vote, or more than 50 percent of the total value of all classes of stock of the corporation.

### Section 1.898-3

Section 1.898-3(a)(1) provides the general rule that the required year of a specified foreign corporation means the majority U.S. shareholder year. Paragraph (a)(2) provides that a specified foreign corporation that is a controlled foreign corporation may elect, in lieu of the required year, a taxable year beginning one month earlier than the majority U.S. shareholder year. Paragraph (a)(3) defines majority U.S. shareholder year, and paragraph (a)(4) provides rules for situations in which more than one majority U.S. shareholder year exists. Paragraph (a)(5) defines testing days which are the days on which a specified foreign corporation must determine whether it is using the required year. Paragraph (b) provides special rules for foreign personal holding companies that are specified foreign corporations.

### Section 1.898-4

Section 1.898-4 provides special rules applicable to specified foreign corporations. Paragraph (a) sets forth rules for changes to the required year of a specified foreign corporation for its first taxable year beginning after July 10, 1989, and paragraph (b) provides rules for changes in the required year of a specified foreign corporation during a taxable year subsequent to its first taxable year beginning after July 10, 1989.

Paragraph (c) provides rules for situations in which a specified foreign corporation maintains a foreign taxable year (for purposes of computing income tax liabilities due a foreign country) that is different from its required year, including rules relating to the computation of income and earnings and profits of the corporation and rules for the situation in which the U.S. majority shareholder year is a 52-53-week taxable year and the specified foreign corporation's taxable year is not, or in which the specified foreign corporation's taxable year is a 52-53-week taxable year and the U.S. majority shareholder year is not.

A foreign income tax accrues only when the liability for it is fixed and the amount of the liability can be determined. This event generally occurs at the end of the foreign taxable year with respect to a foreign income tax that is imposed on that year's income. Consequently, with the enactment of section 898, a mismatch may arise between the income that comprises a subpart F or foreign personal holding company inclusion and the creditable foreign taxes related to the inclusion when the foreign taxable year of a specified foreign corporation ends later than the corporation's United States taxable year.

Adherence to the foreign tax accrual rule in the context of section 898 may result in income being taxed under subpart F without the associated foreign income taxes being available as a credit under section 960. While we considered several options to address the effect of the foreign tax accrual rule in this context, we believe that adherence to the foreign tax accrual rule is justified for several reasons. First, unlike section 338 (i), there is no direct authority in section 898 to modify the rule. Second, rules that require the pooling of post-1986 undistributed earnings and foreign taxes mitigate the effect of the foreign tax accrual rule. Third, determining the foreign taxes on a specified foreign corporation's taxable income prior to the end of the foreign taxable year may not be possible, especially where that foreign taxable year has not ended by the filing date of the applicable U.S. tax return.

Accordingly, modifying the foreign tax accrual rule for specified foreign corporations that have foreign taxable years which differ from their required year would result in speculative foreign tax accruals, necessitating a corrective mechanism, and would result in a set of highly complex rules which would be difficult to administer. Such an approach would place additional pressure on the foreign tax credit rules,

in particular, on the section 905(c) rules. Finally, the potential mismatch resulting from adherence to the foreign tax accrual rule is mitigated by the rule, discussed below, that applies to the first taxable year after section 898 was enacted and that spreads over four taxable years the recognition of certain income otherwise required to be recognized in one year as a result of section 898.

Section 1.898-4(d) provides rules to implement section 7401(d)(2)(C) of the Act. That section of the Act provides that if, because of the change in taxable year, any United States person would be required to include in gross income for its taxable year amounts attributable to two taxable years of the specified foreign corporation, the amount of income reported for the short taxable year of the specified foreign corporation shall be included in the United States person's gross income ratably over its next four taxable years beginning with its taxable year in which amounts attributable to two taxable years of the specified foreign corporation would have been included.

The foregoing four-year rule applies only when a United States person would otherwise be required to include deemed distributions of income from more than one taxable year of the specified foreign corporation in any one of its own taxable years, and only if the short taxable year of the specified foreign corporation was its first taxable year beginning after July 10, 1989. If a specified foreign corporation that changed its taxable year in accordance with section 898 derived subpart F income in its first taxable year, but not in its second (short) taxable year, which ended within the one taxable year of the United States person, then the ratable four-year inclusion would not be applicable. Finally, any United States person who would otherwise be subject to the four-year rule may not waive that rule and accelerate an income inclusion due to the application of section 898.

#### Section 1.563-3

Section 7401(b)(1) of the Act amended section 563 of the Code by adding a new subsection (c) which generally requires that, in determining the dividends paid deduction for purposes of the foreign personal holding company provisions of the Code, a dividend paid after the close of any taxable year, and on or before the 15th day of the third month following the close of that taxable year, will be considered as paid during that taxable year to the extent the foreign personal holding company designates the dividend as being taken into account under section 563(c). Section 1.563-3

provides rules to implement section 7401(b)(1).

#### D. Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the rules on small business.

#### E. Comments and Requests for a Public Hearing

Before adopting these regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits timely written comments on the proposed rules. Notice of the time, place and date for the hearing will be published in the Federal Register.

#### F. Drafting Information

The principal author of this regulation is Bill Lundeen of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

#### List of Subjects

§§ 1.441-1 Through 1.444-3T

Accounting, Income Taxes, Reporting and recordkeeping requirements.

§§ 1.561-1 Through 1.565-6

Income taxes, Reporting and recordkeeping requirements.

§§ 1.891-1 Through 1.907(f)-1A

Aliens, Foreign investments in United States, Income Taxes, Reporting and recordkeeping requirements, United States investments abroad.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

**PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953**

Paragraph 1. The authority citation for 26 CFR part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 \* \* \* Sections 1.898-1 through 1.898-4 also issued under 26 U.S.C. 898. \* \* \*

Par. 2. Section 1.441-1T is amended by adding paragraph (b)(1)(ii)(I) to read as follows:

**§ 1.441-1T Period for computation of taxable income (temporary).**

- (b) \* \* \*  
(1) \* \* \*  
(ii) \* \* \*

(I) In the case of any controlled foreign corporation or foreign personal holding company that is a specified foreign corporation, within the meaning of section 898 and § 1.898-2, the applicable rules are contained in section 898 and the regulations under that section.

Par. 3. Section 1.442-1 is amended by adding a sentence to the end of paragraphs (a)(1), (b)(3) and (c)(5), to read as follows:

**§ 1.442-1 Change of annual accounting period.**

(a) \* \* \*  
(1) \* \* \* For special rules relating to controlled foreign corporations and foreign personal holding companies that are specified foreign corporations, within the meaning of section 898 and § 1.898-2, see section 898 and the regulations under that section.

(b) \* \* \*  
(3) \* \* \* For special rules relating to controlled foreign corporations and foreign personal holding companies that are specified foreign corporations, within the meaning of section 898 and § 1.898-2, see section 898 and the regulations under that section.

(c) \* \* \*  
(5) \* \* \* For special rules relating to controlled foreign corporations and foreign personal holding companies that are specified foreign corporations, within the meaning of section 898 and § 1.898-2, see section 898 and the regulations under that section.

Par. 4. Section 1.442-2T is amended by adding paragraph (a)(9) to read as follows:

**§ 1.442-2T Special limitations on certain changes of annual accounting period (Temporary).**

(a) \* \* \*

(9) Any specified foreign corporation, within the meaning of section 898 and § 1.898-2, that is required to change its taxable year to the required year under section 898 and the regulations under that section.

Par. 5. Section 1.563-3 is redesignated as § 1.563-4 and new § 1.563-3 is added to read as follows:

**§ 1.563-3 Foreign personal holding company tax; Procedure for designation of a dividend as being taken into account under section 563(c).**

In determining the deduction for dividends paid under section 561, a foreign personal holding company may designate a dividend paid after the close of any taxable year beginning after July 10, 1989, and on or before the 15th day of the third month following the close of that taxable year, as being taken into account under section 563(c) and this section by making the designation on an attachment to Schedule N of Form 5471. The designation must set forth the date of the distribution and a statement indicating the extent to which the distribution is being taken into account under section 563(c), and any other information required by Form 5471 and the instructions to that form. The designation must be signed and dated by a duly authorized corporate officer of the foreign personal holding company. If a foreign personal holding company took a dividend paid into account under section 563(c) for any taxable year beginning after July 10, 1989, and ending prior to [Insert date that is 120 days after date of publication of Final Regulations in the Federal Register] but did not follow the procedures set forth in this paragraph, then a designation on an attachment to Schedule N of Form 5471 setting forth the information required above should be signed in a manner set forth above and attached to the first Form 5471 and, if applicable, Form 1120F; to be filed after [Insert date that is 120 days after date of publication of Final Regulations in the Federal Register.]

Par. 8. Sections 1.898-0 through 1.898-4 are added under the heading "miscellaneous provisions" to read as follows:

**§ 1.898-0 Outline of regulations for section 898.**

This section lists the major paragraphs contained in §§ 1.898-1 through 1.898-4.

**§ 1.898-1 Taxable year of certain foreign corporations.**

- (a) In general.  
(b) Effective dates.  
(c) Exceptions to section 898.  
(1) Specified foreign corporations with no section 951(a) or foreign personal holding company income.  
(2) Elections to be treated as domestic corporations.

**§ 1.898-2 Definition of specified foreign corporation.**

- (a) In general.  
(b) Ownership requirements.  
(1) In general.  
(2) Ownership by attribution.  
(3) Definition of United States shareholder.  
(i) In general.  
(ii) Certain captive insurance companies.  
(iii) Foreign personal holding companies.  
(4) Illustrations.  
(c) Special rule for foreign personal holding companies that are not controlled foreign corporations.  
(1) In general.  
(2) Illustrations.

**§ 1.898-3 Determining the required year.**

- (a) Controlled foreign corporations.  
(1) In general.  
(2) One-month deferral election.  
(3) Majority U.S. shareholder year.  
(i) In general.  
(ii) Passthrough entities.  
(4) Inconsistent majority U.S. shareholder years.  
(i) In general.  
(ii) Formula for determining least aggregate deferral.  
(iii) Illustrations.  
(iv) Procedural requirements and effective date.  
(5) Testing days.  
(i) In general.  
(ii) Illustration.  
(iii) Additional testing days.  
(iv) Illustration.  
(v) Anti-abuse rule.  
(b) Foreign personal holding companies.  
(1) In general.  
(2) One-month deferral election not available.  
(3) Testing days.

**§ 1.898-4 Special rules.**

- (a) Changes in the required year of a specified foreign corporation for its first taxable year beginning after July 10, 1989.  
(1) In general.  
(2) Procedure for a specified foreign corporation to conform to the required year for the first taxable year beginning after July 10, 1989.  
(i) No section 898(c)(1)(B) election.  
(ii) With section 898(c)(1)(B) election.  
(iii) Filing requirement.  
(b) Changes in the required year of a specified foreign corporation during a taxable year of a specified foreign corporation subsequent to its first taxable year beginning after July 3, 1989.  
(1) In general.  
(2) Procedure for the change to a new required year of a specified foreign corporation for taxable years subsequent

- to its first taxable year beginning after July 10, 1989.
- (i) Different majority U.S. shareholder year.
  - (ii) Election under section 898(c)(1)(B).
  - (iii) Procedure for prior years.
  - (iv) Making a second election under section 898(c)(1)(B).
  - (v) Procedure for obtaining the consent of the Commissioner to change the required year of specified foreign corporations.
- (3) Short period.
- (i) In general.
  - (ii) Illustrations.
- (4) Conforming changes in the majority U.S. shareholder year.
- (c) Nonconforming foreign and United States taxable years of a specified foreign corporation.
- (1) In general.
  - (2) Computation of income and earnings and profits of a specified foreign corporation.
    - (i) Separate books of account.
    - (ii) Income and earnings and profits computation in lieu of separate books.
    - (iii) Illustration.
  - (3) 52-53-week taxable year.
    - (i) In general.
    - (ii) Majority United States shareholder with 52-53-week taxable year.
  - (iii) Specified foreign corporation with a 52-53-week taxable year.
  - (iv) Illustrations.
- (4) Certain captive insurance companies that elect to treat their related person insurance income as income effectively connected with the conduct of a United States trade or business.
- (d) Four-year income spread.

**§ 1.898-1 Taxable year of certain foreign corporations.**

(a) *In general.* Pursuant to section 898(a), the taxable year of a specified foreign corporation is the required year. The required year is generally the majority U.S. shareholder year. These regulations define specified foreign corporation and United States shareholder, for purposes of these rules, at § 1.898-2 (a) and (b)(3), respectively. The ownership requirements of a specified foreign corporation, which are a part of the definition of specified foreign corporation, are set forth at § 1.898-2(b)(1) and (2). A special rule for determining whether a foreign corporation that meets the ownership requirements of a foreign personal holding company is a specified foreign corporation as located at § 1.898-2 (c). Section 1.898-3 sets forth the rules for the determination of the required year, including rules by which a specified foreign corporation that is a controlled foreign corporation may elect a taxable year beginning one month earlier than the majority U.S. shareholder year. Section 1.898-4 sets forth special rules including rules at paragraphs (a) and (b) of that section on changes in the required year, rules at paragraph (c) of that section covering situations where

the required year under section 898 is different from the specified foreign corporation's foreign taxable year (the taxable year for purposes of computing income tax liabilities due a foreign country), and rules at paragraph (d) of that section regarding the four-year spread of certain income.

(b) *Effective dates.* Sections 1.898-1 through 1.898-4 are effective for taxable years of specified foreign corporations beginning after July 10, 1989. However, §§ 1.898-3(a)(4) (regarding situations in which inconsistent majority U.S. shareholder years exist) and 1.898-3(a)(5)(iii) (regarding situations in which additional testing days are required) are effective for taxable years beginning after [Insert Date 120 Days After Date of Publication of Final Regulations in the Federal Register], and section 1.898-4(b) is effective for changes in the required year of a specified foreign corporation subsequent to its first taxable year beginning after July 10, 1989.

(c) *Exceptions to section 898—(1) Specified foreign corporations with no section 951(a) or foreign personal holding company income.* A specified foreign corporation is not required to conform its taxable year to the required year so long as its United States shareholders do not have any amount includible in gross income pursuant to section 951(a) and do not receive any actual or deemed distributions attributable to amounts described in section 553 with respect to that corporation. Once any United States shareholder of that specified foreign corporation has any amount includible in gross income pursuant to section 951(a) or receives any actual or deemed distributions attributable to amounts described in section 553 with respect to that corporation, then the specified foreign corporation must comply with section 898 and §§ 1.898-3 and 1.898-4 beginning with its first taxable year subsequent to the taxable year to which that shareholder's income is attributable. Once the specified foreign corporation is required to conform its taxable year to the required year, the fact that the shareholders of the corporation cease to have any such amount includible in gross income pursuant to section 951(a) or section 553 is not relevant. Section 898 continues to apply.

(2) *Elections to be treated as domestic corporations.* A foreign corporation that is a foreign insurance company and that elects to be treated as a domestic corporation pursuant to section 953(d) is treated as a domestic corporation for all purposes of the Code and, thus, is not subject to section 898. Likewise, a

foreign corporation organized under the laws of a contiguous foreign country and described in section 1504(d) is not subject to section 898 if the foreign corporation is treated as a domestic corporation in accordance with section 1504(d).

**§ 1.898-2 Definition of specified foreign corporation.**

(a) *In general.* For purposes of section 898 and §§ 1.898-1 through 1.898-4, a specified foreign corporation means any foreign corporation with respect to which the ownership requirements of section 898(b)(2) and paragraph (b) of this section are met and which either is treated as a controlled foreign corporation for any purpose under sections 951 through 964 of the Code (including sections 957(a), 957(b) and 953(c)), or is a foreign personal holding company, as defined in section 552.

(b) *Ownership requirements—(1) In general.* The ownership requirements of section 898(b)(2) and this paragraph (b)(1) are met with respect to any foreign corporation if a United States shareholder owns, or is considered to own by applying the attribution rules set forth in paragraph (b)(2) of this section, on each testing day, more than 50 percent of the total voting power of all classes of stock of the foreign corporation entitled to vote, or more than 50 percent of the total value of all classes of stock of the foreign corporation.

(2) *Ownership by attribution.* For purposes of section 898(b)(2)(A) and paragraph (b)(1) of this section, the rules contained in the following sections of the Internal Revenue Code apply in determining ownership—

(i) Section 958 (a) and (b) for determining direct, indirect, and constructive stock ownership of a controlled foreign corporation;

(ii) Section 551(f) pertaining to the stock of a foreign personal holding company held through a foreign entity; and,

(iii) Section 554 for determining stock ownership of a foreign personal holding company.

(3) *Definition of United States shareholder—(i) In general.* For purposes of §§ 1.898-1 through 1.898-4, United States shareholder has the meaning given to it by section 951(b), except that, in the case of a foreign corporation having related person insurance income, as defined in section 953(c)(2), a person will be treated as a United States shareholder for purposes of section 898 if that person is treated as a United States shareholder under section 953(c)(1). See section 898(b)(3)(A).

(ii) *Certain captive insurance companies.* The determination of whether certain shareholders are United States shareholders under section 953(c)(1) and, consequently, whether the foreign corporation is a controlled foreign corporation for a particular taxable year, depends on the proportion of related person insurance income to total insurance income earned by the foreign corporation during the taxable year. If the related person insurance income of the foreign corporation is less than 20 percent of its total insurance income for the year, then the special rules of section 953(c) for captive insurance companies will not apply. The determination of whether the related person insurance income of a foreign corporation is less than 20 percent of its total insurance income for a particular taxable year cannot be made until the end of that year. Consequently, a foreign corporation that derives related person insurance income generally will not be required to consider non-10 percent United States shareholders (i.e., persons who are United States shareholders only because of the special captive insurance rules) in determining whether it is a controlled foreign corporation on the first day of the foreign corporation's taxable year to determine further whether it is a specified foreign corporation and, therefore, subject to section 898, unless the foreign corporation was treated as a controlled foreign corporation because of the special captive insurance rules for the immediately preceding taxable year. When a foreign corporation is both a captive insurance company and a specified foreign corporation, it must consider all persons who are United States shareholders under both sections 951(b) and 953(c) in determining its required year.

(iii) *Foreign personal holding companies.* In the case of any foreign personal holding company as defined in section 552, which is not also a specified foreign corporation by reason of being a controlled foreign corporation under section 898(b)(1)(A)(i), United States shareholder means any person who is treated as a United States shareholder under section 551(a).

(4) *Illustrations.* The application of this paragraph (b) may be illustrated by the following examples:

*Example 1.* Z is a publicly traded United States corporation that owns all of the outstanding stock of FY, a foreign corporation. FY is not a foreign personal holding company. FY owns 51 percent (of both voting power and value) of all of the outstanding stock of FX, which is also a foreign corporation. The remainder of the stock is owned by an unrelated foreign

corporation. FY is a controlled foreign corporation and a specified foreign corporation. In addition, pursuant to section 958(a)(2), Z is considered to own its proportionate share (i.e., 51 percent) of the stock of FX which is owned by FY. Thus, FX is also both a controlled foreign corporation and specified foreign corporation, as defined in section 898(b) and this section.

*Example 2.* Z is a United States citizen who owns 51 percent of the value, but none of the voting stock, of FY, a foreign corporation. The remaining 49 percent of the value of FY, as well as all of FY's voting stock, is owned by a nonresident alien individual who is not related to Z. FY owns 51 percent (of both voting power and value) of all of the outstanding stock of FX, which is also a foreign corporation. FY is not a controlled foreign corporation because it does not have a United States shareholder within the meaning of section 951(b) (although if FY had related person insurance income it may be a controlled foreign corporation under the rules of section 953(c)). FY was a foreign personal holding company for its prior year. FY is a foreign personal holding company and a specified foreign corporation for the current year for purposes of section 898 because Z is a United States shareholder within the meaning of section 551(a) who owns 51 percent of the total value of the stock of FY. See section 552(a)(2)(B). Under section 551(f), however, the stock of FX owned by FY is not treated as being owned proportionately by Z. Accordingly, FX is not subject to section 898.

*Example 3.* FX has 20 equal shareholders, all of whom are related United States persons. Thus, FX does not qualify as a controlled foreign corporation under the general subpart F rules applicable to insurance companies because none of the United States persons are United States shareholders. However, if FX earns related person insurance income in a particular taxable year, then it will be considered a controlled foreign corporation for that year, unless the amount of the related person insurance income was less than 20 percent of its total insurance income for that year. If, in its taxable year ending December 31, 1990, FX earns related person insurance income in an amount that is less than 20 percent of its total insurance income and, thus, is not considered a controlled foreign corporation, then FX would not be required to determine its required year on January 1, 1991. Alternatively, if FX earns related person insurance income in its taxable year ending December 31, 1990, in excess of the 20 percent *de minimis* amount and, thus, is considered a controlled foreign corporation, FX would be required to determine whether it is a specified foreign corporation on January 1, 1991, and in making that determination, would be required to treat all United States persons owning its stock as United States shareholders.

(c) *Special rule for foreign personal holding companies that are not controlled foreign corporations—(1) In general.* A foreign corporation that is not a controlled foreign corporation for 30 days or more during the current

taxable year will be required to determine whether it is a specified foreign corporation on any testing day during the current year only if the foreign corporation—

(i) meets the ownership requirements of section 552(a)(2) (ownership requirements for a foreign personal holding company) for the current taxable year, and

(ii) was a foreign personal holding company for its taxable year immediately preceding the current taxable year.

(2) *Illustrations.* The application of this paragraph (c) may be illustrated by the following examples:

*Example 1.* (i) FX is a foreign corporation that uses the calendar year as its taxable year. For calendar year 1989, its last taxable year beginning before the effective date of section 898, FX met the stock ownership requirements of section 552(a)(2) for a foreign personal holding company. More than 50 percent of the total value of all classes of stock of FX is owned by Y, a United States shareholder with a taxable year ending June 30. The remaining value of FX stock, and all of FX's voting stock, is owned by Z, a nonresident alien individual who is unrelated to Y. FX is not a controlled foreign corporation.

(ii) On January 1, 1990 (FX's first testing day after the effective date of section 898), FX examined its gross income for the taxable year ending December 31, 1989. FX met the gross income requirement of section 552(a)(1) for a foreign personal holding company for that year. Therefore, under the rules of this paragraph (c), FX was deemed to be a foreign personal holding company, for purposes of section 898, for the current taxable year beginning January 1, 1990. Accordingly, FX was required to determine whether it was a specified foreign corporation on January 1, 1990. FX was a specified foreign corporation on that date and, therefore, was required to change its taxable year to the required year ending on June 30.

*Example 2.* The facts are the same as in *Example 1*, with the additional fact that FX did not meet the gross income requirement for a foreign personal holding company for the short taxable year beginning January 1, 1990, and ending June 30, 1990. Nevertheless, FX will be required to maintain a taxable year beginning July 1, 1990, as its required year under section 898(c).

#### § 1.898-3 Determining the required year.

(a) *Controlled foreign corporations—*

(1) *In general.* The required year is the majority U.S. shareholder year prescribed in section 898(c)(1)(C) and paragraph (a)(3) of this section. If, however, there are inconsistent majority U.S. shareholder years, then the required year is the taxable year prescribed in section 898(c)(1)(A)(ii) and paragraph (a)(4) of this section.

(2) *One-month deferral election.* A specified foreign corporation that is a controlled foreign corporation may elect

under section 898(c)(1)(B) and § 1.898-4(a)(2)(ii) and (b)(2)(i) of this section a taxable year beginning one month earlier than the majority U.S. shareholder year. The specified foreign corporation may revoke this election; see § 1.898-4(b). If the specified foreign corporation revokes the election, it may re-elect the one-month deferral only if it follows the procedures set forth in § 2.898-4(b)(2) (iv) and (v). A specified foreign corporation that is a foreign personal holding company, but is not a controlled foreign corporation, may not make this election. Also, this election may not be made by a specified foreign corporation that is a controlled foreign corporation, but whose required year is the taxable year prescribed by section 898(c)(1)(A)(ii) and paragraph (a)(4) of this section because there are inconsistent majority U.S. shareholder years.

(3) *Majority U.S. shareholder year*—(i) *In general.* For the purpose of determining the required year of a specified foreign corporation, the majority U.S. shareholder year under section 898(c)(1)(C)(i) means the taxable year (if any) which, on each testing day as defined in paragraph (a)(5) of this section, constitutes the taxable year of a United States shareholder described in either paragraph (a)(3)(i)(A) or (B) of this section.

(A) Each United States shareholder, as defined in sections 898(b)(3)(A) and 1.898-2(b)(3), that owns more than 50 percent of the voting power of all classes of stock of the specified foreign corporation entitled to vote, or more than 50 percent of the total value of all classes of stock of the specified foreign corporation, after application of the attribution rules of section 898(b)(2)(B). This shareholder is described in section 898(b)(2)(A) and is referred to in this section as a "more than 50 percent United States shareholder."

(B) Each United States shareholder, as defined in section 898(b)(3)(A) and § 1.898-2(b)(3), that is not a more than 50 percent United States shareholder and whose stock was treated as owned under section 898(b)(2)(B) (the attribution rules) by a more than 50 percent United States shareholder.

(ii) *Passthrough entities.* For the purpose of determining the required year of a specified foreign corporation, if each United States shareholder described in paragraph (a)(3)(i)(A) or (B) of this section is a passthrough entity, such as an S corporation, partnership, trust, or estate, then the majority U.S. shareholder year is the taxable year which, on a testing day, constitutes the taxable year of the passthrough entity and not the taxable year or years of the

passthrough entity's shareholders, partners, or beneficiaries.

(4) *Inconsistent majority U.S. shareholder years*—(i) *In general.* There may exist more than one majority U.S. shareholder year under section 898(c)(1)(C)(i) and paragraph (a)(3) of this section because the taxable years of shareholders described in paragraph (a)(3)(i)(A) or (B) of this section may be different taxable years. If the majority U.S. shareholder years are inconsistent, then the specified foreign corporation must adopt the taxable year that results in the least aggregate deferral of income to all United States shareholders of the specified foreign corporation, even if that taxable year is not a majority U.S. shareholder year. See paragraph (a)(4)(iii). *Example 2*, of this section. If the required year is the taxable year prescribed by this paragraph (a)(4) because there are inconsistent majority U.S. shareholder years, then the one-month deferral election under section 898(c)(1)(B) and paragraph (a)(2) of this section is not available.

(ii) *Formula for determining least aggregate deferral.* The aggregate deferral of income for a particular year is equal to the sum of the products determined by multiplying, on each testing day as defined in paragraph (a)(5) of this section, the number of month(s) of deferral for each United States shareholder, that are shareholders on the testing day, that would be generated by that year end by that United States shareholder's percentage interest in deemed distributions from the specified foreign corporation. The United States shareholder's taxable year that produces the lowest sum when compared to the other United States shareholders' taxable years is the taxable year that results in the least aggregate deferral of income to the United States shareholders. For purposes of this section, the number of months of deferral for a United States shareholder of a specified foreign corporation is measured by the number of months from the end of the taxable year of the specified foreign corporation to the end of the taxable year of the United States shareholder. Part of a month is treated as a month. If the calculation results in more than one taxable year qualifying as the taxable year with the least aggregate deferral, the specified foreign corporation may select any one of such taxable years as its required year. However, if one of such qualifying taxable years is also the specified foreign corporation's existing taxable year, the specified foreign corporation must maintain its existing taxable year.

(iii) *Illustrations.* The application of this paragraph (a)(4) may be illustrated by the following examples:

*Example 1.* (i) FX is a foreign corporation with two classes of stock, only one of which is voting stock. Each class of stock shares equally in distributions. FX has a June 30 taxable year. FX's shareholders, A, B and C are U.S. citizens. A owns 45 percent of each class of stock, B owns 35 percent of each class of stock, and C owns the remaining 20 percent of each class of stock. A is B's grandfather and C is unrelated to A and B. A and C are calendar year taxpayers. B's taxable year ends on June 30. Under sections 958(b)(1) and 318(a)(1)(A), A is considered to own the stock owned by B. Under section 898(c)(1)(C)(i)(I), A is a more than 50 percent United States shareholder and under section 898(c)(1)(C)(i)(II), B is a United States shareholder whose stock is considered to be owned by a more than 50 percent United States shareholder. Accordingly, FX has two majority U.S. shareholder years, the calendar year and the fiscal year ending June 30. These majority U.S. shareholder years are inconsistent.

(ii) Beginning July 1, 1990, the first day of FX's first taxable year beginning after July 10, 1989, FX must conform its taxable year to the required year by adopting the taxable year that results in the least aggregate deferral of income, taking into consideration the taxable year of each United States shareholder, including C. The taxable year ending December 31 produces  $.35 \times 6$  (B's percentage share of distributions from FX multiplied by the number of months of deferral if December 31 is the required year), or a product of 2.1. The taxable year ending June 30 produces  $[.45 \times 6] + [20 \times 6]$  (A and C's percentage shares of distributions from FX multiplied by the number of months of deferral if June 30 is the required year), or a product of 3.9. Accordingly, the taxable year ending December 31 is the required year. However, if C's year end were also June 30, or if only the nonvoting stock shared in distributions and B owned all of the nonvoting stock, then the taxable year ending June 30 would produce the least aggregate deferral of income, and would be the required year.

*Example 2.* (i) LX is a calendar year foreign corporation with one class of stock. LX's shareholders, A, B and C are U.S. citizens. A is B's grandfather and C is unrelated to A and B. A owns 10 percent of LX's stock and has a taxable year ending June 30. B owns 45 percent of LX's stock and has a taxable year ending March 31. C owns the remaining 45 percent of LX and has a September 30 taxable year. Under sections 958(b)(1) and 318(a)(1)(A), A is considered to own the stock owned by B. Under section 898(c)(1)(C)(i)(I), A is a more than 50 percent United States shareholder and under section 898(c)(1)(C)(i)(II), B is a United States shareholder whose stock is considered to be owned by a more than 50 percent United States shareholder. Accordingly, LX has two inconsistent majority U.S. shareholder years, the fiscal year ending June 30 and the fiscal year ending March 31.

(ii) Beginning January 1, 1990, the first day of LX's first taxable year beginning after July

10, 1989, LX must conform its taxable year to the required year by adopting the taxable year that results in the least aggregate deferral of income, taking into consideration the taxable year of each United States shareholder. The taxable year ending June 30 produces  $[(.45 \times 3) + (.45 \times 9)]$  (B and C's, respective percentage shares of distributions multiplied by the number of months of deferral), or a product of 5.4. The taxable year ending March 31 produces  $[(.1 \times 9) + (.45 \times 6)]$  (A and C's percentage shares of distributions multiplied by the number of months of deferral), or a product of 3.6. The taxable year ending September 30 produces  $[(.1 \times 3) + (.45 \times 6)]$  (A and B's percentage shares of distributions multiplied by the number of months of deferral), or a product of 3.0. Accordingly, September 30 is the required year.

(iv) *Procedural requirements and effective date.* This paragraph (a)(4) is effective for taxable years beginning after [Insert Date 120 Days After Date of Publication of Final Regulations in the Federal Register]. In order to show that the requirements of this paragraph (a)(4) are satisfied, a statement setting forth the computations required to establish the taxable year that results in the least aggregate deferral of income to the United States shareholders of the specified foreign corporation must be attached to Form 5471 and, if applicable, to Form 1120F, and must indicate the following at the top of page one of the statement: "FILED UNDER § 1.898-3(a)(4)."

(5) *Testing days.*—(i) *In general.* A specified foreign corporation must identify its majority U.S. shareholder year(s), if any, for the purpose of determining its required year. The specified foreign corporation must determine its majority U.S. shareholder year on each testing day. In general, the testing day is the first day of the specified foreign corporation's taxable year for U.S. tax purposes, determined without regard to section 898. See section 898(c)(1)(C)(ii).

(ii) *Illustration.* The application of paragraph (a)(5)(i) of this section may be illustrated by the following example:

*Example.* FX is a foreign corporation that, prior to the effective date of section 898, used the calendar year as its taxable year. Thus, on January 1, 1990, the first day of FX's first taxable year beginning after July 10, 1989, FX determined whether it was a specified foreign corporation and, thus, required to change its taxable year to the required year under section 898(c). Based on this test, FX changed to a taxable year ending on June 30 (because FX was a specified foreign corporation and its majority U.S. shareholder year ends on June 30). Accordingly, FX had a short period taxable year for the period beginning January 1, 1990, and ending June 30, 1990. On July 1, 1990, the first day of its new taxable year, FX again tested to

determine whether it was using the required year.

(iii) *Additional testing days.* For taxable years of specified foreign corporations beginning after [Insert date that is 120 days after final regulations are published in the Federal Register], a specified foreign corporation must determine its majority U.S. shareholder year on each day, since the most recent testing day described in paragraph (a)(5)(i) of this section, on which a substantial change occurs in the United States ownership of the stock of the specified foreign corporation. A substantial change in the United States ownership of the stock of a specified foreign corporation is a change that results in a new more than 50 percent United States shareholder of the foreign corporation.

(iv) *Illustration.* The application of paragraph (a)(5)(iii) of this section may be illustrated by the following example:

*Example.* FX is a controlled foreign corporation with one class of stock and a taxable year ending on June 30. Y, the majority United States shareholder of FX, owns 51 percent of the stock of FX. Y also has a taxable year ending June 30. Thus, FX is a specified foreign corporation subject to section 898. On May 1, 1994, Y sold 10 percent of the stock in FX to Z, an unrelated United States corporation that owned 41 percent of the stock of FX before the sale. Z obtained, therefore, a sufficient amount of FX stock to qualify as a "more than 50 percent United States shareholder" of FX. Z has a taxable year ending on April 30. Consequently, on May 1, 1994, FX determined that its new required year was a taxable year ending April 30. FX has a taxable year ending June 30, 1994, and a short taxable year beginning July 1, 1994, and ending April 30, 1995. See § 1.898-4 (b)(3).

(v) *Anti-abuse rule.* The district director may require the use of a testing day other than that identified in paragraph (a)(5)(i) or (iii) of this section that will reflect more accurately the ownership of the specified foreign corporation and thereby the aggregate deferral of income to the United States shareholders of the specified foreign corporation where the United States shareholders engage in a transaction (or transactions) that has as its principal purpose the avoidance of the principles of this section. Thus, the anti-abuse rule of the preceding sentence would apply, for example, when there is a transfer of an interest in a specified foreign corporation that results in a temporary transfer of that interest principally for the purpose of qualifying for a specific taxable year under the principles of this section.

(b) *Foreign personal holding companies.*—(1) *In general.* The required year is the majority U.S. shareholder

year prescribed by section 898(c)(1)(A) and paragraph (a)(3) of this section. If, however, there are inconsistent majority U.S. shareholder years, then the required year is the taxable year determined under the provisions of paragraph (a)(4) of this section.

(2) *One-month deferral election not available.* A specified foreign corporation that is a foreign personal holding company, but is not a controlled foreign corporation, may not make the one-month deferral election of paragraph (a)(2) of this section.

(3) *Testing days.* See paragraph (a)(5) of this section.

#### § 1.898-4 Special rules.

(a) *Changes in the required year of a specified foreign corporation for its first taxable year beginning after July 10, 1989.*—(1) *In general.* A specified foreign corporation must conform its taxable year to the required year as defined in section 898(c) for taxable years beginning after July 10, 1989. In addition, section 898(c)(1)(B) permits a specified foreign corporation that is a controlled foreign corporation to elect a taxable year beginning one month earlier than the majority U.S. shareholder year.

(2) *Procedure for a specified foreign corporation to conform to the required year for the first taxable year beginning after July 10, 1989.*—(i) *No section 898(c)(1)(B) election.* If no election under section 898(c)(1)(B) can be made because the specified foreign corporation is a foreign personal holding company, or no election is being made for a specified foreign corporation that is a controlled foreign corporation, but the specified foreign corporation is changing its first taxable year beginning after July 10, 1989, to conform to the required year, then, unless the instructions to the forms provide otherwise, the words "Change in Taxable Year" must be placed in the upper left hand corner of the first page of Form 5471 and, if applicable, on Form 1120F, with respect to the specified foreign corporation for the taxable year for which the change is made. If a specified foreign corporation is not required to change its taxable year, then no notation concerning this fact need appear on Form 5471 and, if applicable, on Form 1120F.

(ii) *With section 898(c)(1)(B) election.* The election under section 898(c)(1)(B) may be made for a specified foreign corporation that is a controlled foreign corporation for its first taxable year beginning after July 10, 1989, by indicating on Form 5471 and, if applicable, on Form 1120F, that the taxable year shown on the form with



respect to the controlled foreign corporation was determined in accordance with section 898(c)(1)(B). The following words must be used unless the instructions to the forms provide otherwise:

(A) If the election involves a change in the taxable year of the controlled foreign corporation, the words "Section 898(c)(1)(B) Election—Change in Taxable Year" must be placed in the upper left hand corner of the first page of Form 5471 and, if applicable, on Form 1120F; and

(B) If the election does not involve a change in the taxable year of the controlled foreign corporation, the words, "Section 898(c)(1)(B) Election" must be placed in the upper left hand corner of the first page of Form 5471 and, if applicable, on Form 1120F.

(iii) *Filing requirement.* If a specified foreign corporation changed its required year for its first taxable year beginning after July 10, 1989, to conform to the requirements of section 898 and § 1.898-3 but did not follow the procedures set forth in Rev. Proc. 90-26 and this paragraph (a)(2), a statement must be attached to the first Form 5471 and, if applicable, Form 1120F, to be filed after [Insert Date That is 120 Days After Date of Publication of Final Regulations in the Federal Register] indicating that the corporation's taxable year was changed to conform to the requirements of section 898. If a specified foreign corporation has not conformed its first taxable year beginning after July 10, 1989, to the taxable year required by section 898 and § 1.898-3, an amended return with an amended Form 5471 (or Form 1120F) must be filed to satisfy the requirements of section 898, § 1.898-3 and this paragraph (a)(2).

(b) *Changes in the required year of a specified foreign corporation during a taxable year of a specified foreign corporation subsequent to its first taxable year beginning after July 10, 1989—(1) In general.* A specified foreign corporation must conform its taxable year to a different required year should circumstances arise in which the required year changes under the rules of § 1.898-3, such as when a substantial change in ownership of a specified foreign corporation results in a new more than 50 percent United States shareholder with a different majority U.S. shareholder year. The change in taxable year of a specified foreign corporation made to conform to a different required year shall be treated as initiated by the taxpayer and as having been made with the consent of the Commissioner. The requirements set forth in this paragraph (b) are effective

for taxable years subsequent to a specified foreign corporation's first taxable year beginning after July 10, 1989.

(2) *Procedure for the change to a new required year of a specified foreign corporation for taxable years subsequent to its first taxable year beginning after July 10, 1989—(i) Different majority U.S. shareholder year.* If the specified foreign corporation is changing its taxable year to conform to a different required year under paragraph (b)(1) of this section, unless the instructions to the forms provide otherwise, the words "Change in Taxable Year" must be placed in the upper left hand corner of the first page of Form 5471 and, if applicable, on Form 1120F, with respect to the specified foreign corporation for the taxable year for which the change is made. This paragraph covers terminations of prior elections under section 898(c)(1)(B) made in conjunction with that change.

(ii) *Election under section 898(c)(1)(B).* If the specified foreign corporation that is a controlled foreign corporation is changing its taxable year to conform to a different required year under paragraph (b) of this section and an election under section 898(c)(1)(B) is made, the change in taxable year and the election under section 898(c)(1)(B) are to be noted on Form 5471 and, if applicable, on Form 1120F, with respect to that corporation for the taxable year for which the change and election are made. Unless the instructions to the forms provide otherwise, the words "Section 898(c)(1)(B) Election—Change in Taxable Year" must be placed in the upper left hand corner of the first page of each form. This paragraph covers terminations of prior elections under section 898(c)(1)(B) made in conjunction with that election.

(iii) *Procedure for prior years.* If a specified foreign corporation conformed its taxable year to that required by section 898 and § 1.898-3 prior to [Insert Date That is 120 Days After Date of Publication of Final Regulations in the Federal Register] but did not follow the procedures set forth in this paragraph (b)(2), a statement must be attached to the first Form 5471 and, if applicable, Form 1120F, to be filed after [insert Date That is 120 Days After Date of Publication of Final Regulations in the Federal Register] indicating that the corporation's taxable year was changed to conform to the requirements of section 898 and § 1.898-3. If a specified foreign corporation has not conformed a taxable year subsequent to its first taxable year beginning after July 10, 1989, to the taxable year required by

section 898 and § 1.898-3, an amended return, with an amended Form 5471 (or Form 1120F) must be filed to satisfy the requirements of section 898, § 1.898-3 and this paragraph (b)(2).

(iv) *Making a second election under section 898(c)(1)(B).* Except for an election under section 898(c)(1)(B) that is made in conjunction with a change in its taxable year to conform to a different required year under paragraph (b)(2)(i) of this section, a specified foreign corporation that has elected the one-month deferral under section 898(c)(1)(B) and subsequently revoked that election shall not be eligible to make an election under section 898(c)(1)(B) for any taxable year before its fifth taxable year which begins after the first taxable year for which the revocation is effective, unless the consent of the Commissioner pursuant to the procedures set forth in paragraph (b)(2)(v) of this section is obtained.

(v) *Procedure for obtaining the consent of the Commissioner to change the required year of specified foreign corporations.* In the circumstance described in paragraph (b)(2)(iv) of this section, a specified foreign corporation must request the approval of the Commissioner for a change in taxable year by completing and filing Form 1128 (Application for Change in Accounting Period) with the Commissioner of Internal Revenue. The application may be filed either by the majority United States shareholder on behalf of the specified foreign corporation or by the specified foreign corporation. The application must be filed on or before the 15th day of the second calendar month following the close of the short period for which a return is required to effect the change in taxable year. Reference to this regulation must be made part of the application by placing the following statement at the top of page one of the application: "FILED UNDER § 1.898-4." Approval of a change in taxable year described in paragraph (b)(2)(iv) of this section will not be granted unless the taxpayer agrees to the terms, conditions, and adjustments, as set forth by the Commissioner, under which the change will be effected. Unless the instructions to the forms indicate otherwise, re-election of section 898(c)(1)(B) must be noted on Form 5471 and, if applicable, on Form 1120F, for the taxable year for which the re-election is made. Unless the instructions to the forms indicate otherwise, the words "Re-elected Section 898(c)(1)(B) Election—Change in Taxable Year" must be placed in the upper left hand corner of the first page of each form.

(3) *Short period*—(i) *In general.* Any short period required for a specified foreign corporation to effect the change in taxable year described in paragraph (b)(1) of this section will begin on the first day of the specified foreign corporation's current taxable year and will end on the last day of the new required year within which the change in ownership of the specified foreign corporation (or other event that necessitates a change in taxable year) occurs. If, however, the last day of the specified foreign corporation's current taxable year occurs prior to the last day of the new required year within which the change in ownership of the specified foreign corporation (or other event resulting in a new required year) occurs, then the short period will begin the day following the last day of the specified foreign corporation's current taxable year and end on the last day of the new required year subsequent to the required year within which the change in ownership of the specified foreign corporation (or other event resulting in a new required year) occurred. In no case shall the taxable year of the specified foreign corporation be in excess of one year.

(ii) *Illustrations.* The application of this paragraph (b)(3) may be illustrated by the following examples:

*Example 1.* FX is a foreign corporation that is a specified foreign corporation within the meaning of section 898(b). FX had been a calendar year taxpayer. On July 1, 1991, FX was purchased by a United States shareholder with a September 30 fiscal year. Accordingly, the short period required to change the taxable year of FX to the required year began on January 1, 1991, the first day of FX's current taxable year, and ended on September 30, 1991, the last day of the new required year within which the change in ownership of FX occurred.

*Example 2.* The facts are the same as in Example 1 except that on July 1, 1991, FX was purchased by a United States shareholder with a June 30 fiscal year. Accordingly, the short period required to change the taxable year of FX to the required year did not begin until January 1, 1992, the day following the last day of FX's current taxable year because the last day of FX's current taxable year occurs prior to the last day of the new required year within which the change in ownership occurred. The short period will begin January 1, 1992, and will end June 30, 1992.

(4) *Conforming changes in the majority U.S. shareholder year.* The requirements of section 898 and §§ 1.898-3 and 1.898-4 may be satisfied by a majority United States shareholder of a specified foreign corporation changing its taxable year to conform to the taxable year of the specified foreign corporation. However, any change to the United States shareholder's taxable year

requires the approval of the Commissioner, and must be made in accordance with section 442 and the regulations under that section, relating to changes of annual accounting period.

(c) *Nonconforming foreign and United States taxable years of a specified foreign corporation*—(1) *In general.* If a specified foreign corporation's foreign taxable year (for purposes of computing income tax liabilities due a foreign country) does not conform to the required year pursuant to section 898(c) and § 1.898-3, then the United States shareholders must compute any income inclusion relating to the specified foreign corporation including, but not limited to, subpart F income, increase in earnings invested in United States property, foreign personal holding company income, and section 864(d) income in accordance with the rules set forth in paragraphs (c)(2) and (3) of this section. However, see section 338 and the regulations under that section for rules applicable to certain domestic and foreign corporations, and the shareholders of those corporations where an election under that section is made.

(2) *Computation of income and earnings and profits of a specified foreign corporation*—(i) *Separate books of account.* A specified foreign corporation that has a foreign taxable year different from its required year, as determined under section 898(c) and § 1.898-3, will have portions of two foreign annual accounting periods in each required year. In this case, either separate books of account for the specified foreign corporation based upon the required year may be maintained, or income (and earnings and profits) shall be computed as set forth in paragraph (c)(2)(ii) of this section. Books of account must be maintained on a consistent basis for each foreign annual accounting period.

(ii) *Income and earnings and profits computation in lieu of separate books.* In lieu of maintaining separate books of account, income and earnings and profits shall be computed in two steps. First, for the foreign annual accounting period of the specified foreign corporation which ends within its required year, the income (and earnings and profits) of the specified foreign corporation is the entire income (or earnings and profits) of the foreign annual accounting period, less the income (or earnings and profits), if any, of that foreign annual accounting period properly allocable to the preceding taxable year, determined under a consistent application of the principles of section 964 and the regulations under that section. Second, for the foreign

annual accounting period of the specified foreign corporation which ends after its required year, the income (and earnings and profits) of the specified foreign corporation is the income (and earnings and profits) of each month (or quarter) which has ended within the required year determined on the basis of interim actual book closings and computed by a consistent application of the principles of section 964 and the regulations under that section. If the amount of income properly includable in the gross income of United States shareholders in the preceding taxable year is different from the amount of income actually included by United States shareholders in the preceding taxable year, then an adjustment must be made by each United States person affected by means of an amended return for that preceding taxable year.

(iii) *Illustration.* The application of this paragraph (c)(2) may be illustrated by the following example:

*Example.* (i) FX is a specified foreign corporation organized in foreign country, FC. FX's annual accounting period and taxable year, for FC purposes, end March 31. FX's required year is the calendar year. FX did not conform its FC taxable year to the required year. Separate books for United States tax purposes are not maintained. Accordingly, FX's required year, Calendar Year 1, will include portions of two FC annual accounting periods and FC taxable years.

(ii) For the FC period ending March 31, during Calendar Year 1, FX's income (in U.S. dollars) was \$1,000, all of which was foreign personal holding company income. This amount was determined on the basis of FX's annual March 31, FC financial reports, adjusted in accordance with section 964 and the regulations under that section. Of the \$1,000, it was determined from the annual financial reports that \$350 was earned during the months ending in Calendar Year 1. For the period April 1, during Calendar Year 1, to the end of Calendar Year 1, FX's income was \$1,200, determined on the basis of FX's monthly interim FC books of account. Accordingly, the income of FX subject to inclusion in the gross income of United States shareholders for Calendar Year 1, is \$1,550. However, based on FX's annual March 31, Year 2, financial reports (adjusted in accordance with section 964 and the regulations under that section), FX's income for the period April 1, during Calendar Year 1, to the end of Calendar Year 1 was \$1,300, not \$1,200. Accordingly, each United States shareholder of FX must file an amended return for Calendar Year 1 showing its portion of the additional \$100 of income.

(3) *52-53-week taxable year*—(i) *Majority United States shareholder with a 52-53-week taxable year.* If a majority United States shareholder elects to follow a 52-53-week taxable year (determined under section 441(f) and the regulations under that section), and

the specified foreign corporation does not intend to follow a 52-53-week taxable year, then the required year of the specified foreign corporation, as determined under section 898(c) and § 1.898-3, shall be a 12-month taxable year, which must end on the last day of the same month used in determining the 52-53-week taxable year of its majority United States shareholder. If the election of the one-month deferral under section 898(c)(1)(B) and § 1.898-3(a)(2) is made, the election will be valid, and the specified foreign corporation may retain a 12-month taxable year, subject to the condition that the 12-month taxable year must end on the last day of the month which immediately precedes the month used in determining the 52-53-week taxable year of its majority United States shareholder.

(ii) *Specified foreign corporation with a 52-53-week taxable year.* If a specified foreign corporation elects to follow a 52-53-week taxable year, and the majority United States shareholder does not intend to follow a 52-53-week taxable year, then the required year, as determined under section 898(c) and § 1.898-3, of the specified foreign corporation shall be a 52-53-week taxable year, which must end within a seven-day period from the last day of the 12-month taxable year of its majority United States shareholder. If the election of the one-month deferral under section 898(c)(1)(B) and § 1.898-3(a)(2) is made, the election will be valid and the specified foreign corporation may retain a 52-53-week taxable year, subject to the condition that the 52-53-week taxable year must end within a seven-day period from the last day of the month which immediately precedes the 12-month taxable year of its majority United States shareholder.

(iii) *Illustrations.* The application of this paragraph (c)(3) may be illustrated by the following examples:

*Example 1.* X is a United States corporation created on January 1, 1990, that elected to follow a 52-53-week taxable year which ends on the Friday nearest the end of December. Thus, X's first United States taxable year began on Monday, January 1, 1990, and ended on Friday, December 28, 1990; its next taxable year began on Saturday, December 29, 1990, and ended on Friday, January 3, 1992. X owns 100 percent of FY, a specified foreign corporation that is a controlled foreign corporation which follows a 12-month taxable year ending on November 30. In these circumstances, X's taxable year may end either earlier or later than one month after the end of FY's taxable year. Nonetheless, an election under section 898(c)(1)(B), which would permit FY to retain its current taxable year, will be effective because FY's taxable year ends on the last day of the month which immediately

precedes the same month used in determining the 52-53-week taxable year of X, its majority United States shareholder.

*Example 2.* Y is a United States person with a taxable year ending September 30. Y also is the majority United States shareholder of FX, a specified foreign corporation which is a controlled foreign corporation that wishes to make the one-month deferral election under section 898(c)(1)(B). FX follows a 52-53-week taxable year that ends on the Monday closest to the last day of August. In 1990, the last day of August fell on a Friday. Thus, FX's taxable year ended on Monday, September 3, 1990, a date within a seven-day period from the last day of the month which immediately precedes the 12-month taxable year of its majority United States shareholder, Y. In 1994, FX's taxable year will end on Monday, August 29, and its next taxable year will begin on August 30, 1994. Thus, in 1994, FX's taxable year will begin more than one month before the beginning of Y's United States taxable year. Nevertheless, the election made under section 898(c)(1)(B) will be effective because FX's taxable year will end within a seven-day period from the last day of the month which immediately precedes the 12-month taxable year of its majority United States shareholder.

(4) *Certain captive insurance companies that elect to treat their related person insurance income as income effectively connected with the conduct of a United States trade or business.* Section 953(c)(3)(C) permits a foreign corporation to elect to treat its related person insurance income as income effectively connected with the conduct of a trade or business in the United States. Under § 1.953-7(c)(3) of proposed regulations, such a foreign corporation must utilize the calendar year as its annual accounting period for United States tax purposes, as required by section 843. Further, if an election is made for the first taxable year beginning after December 31, 1987, or any subsequent taxable year, the election is effective from the first day of the taxable year for which the election is made (and all subsequent taxable years). Therefore, a foreign corporation that has a fiscal taxable year prior to making the election must file a short-year return for the period from the first day the election becomes effective to the last day of the calendar year in which the election is made. The rules under section 953(c)(3)(C) and § 1.953-7 will prevail over the rules under section 898 and this section. Thus, if a captive insurance company that is a specified foreign corporation makes an election pursuant to section 953(c)(3)(C) and § 1.953-7(c), it must use the calendar year as its annual accounting period for United States tax purposes, regardless of the taxable year of its majority United States shareholder. However, if a captive

insurance company that is a specified foreign corporation does not make the election pursuant to section 953(c)(3)(C) and the regulations thereunder, it must conform its United States taxable year to that of its majority United States shareholder.

(d) *Four-year income spread.* For its first taxable year beginning after July 10, 1989, if, because of the change necessitated by section 898 in the taxable year of the specified foreign corporation, any United States person was required to include in gross income for one taxable year amounts attributable to two taxable years of the specified foreign corporation, the amount that the United States person would otherwise have included in gross income for the one taxable year by reason of the short taxable year of the specified foreign corporation resulting from the change shall be included in that person's gross income ratably over a four-taxable-year period beginning with that one taxable year. A United States person who is required by reason of section 898 to include in gross income amounts attributable to two taxable years of a specified foreign corporation may not waive the four-year ratable inclusion of such gross income.

Shirley D. Peterson,

Commissioner of Internal Revenue.

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BILLING CODE 4830-01-08

The above amendment is effective as if included in the provision of the Tax Reform Act of 1986 (P.L. 99-514) to which it relates.

P.L. 97-34, § 831(g):

Added Code Sec. 897(l) to read as above, applicable to dispositions after June 18, 1980, in tax years ending after

that date. Also, see the amendment note following Code Sec. 897(i) for the special rule with respect to treaties.

[Sec. 898]

SEC. 898. TAXABLE YEAR OF CERTAIN FOREIGN CORPORATIONS.

[Sec. 898(a)]

(a) GENERAL RULE.—For purposes of this title, the taxable year of any specified foreign corporation shall be the required year determined under subsection (c).

[Sec. 898(b)]

(b) SPECIFIED FOREIGN CORPORATION.—For purposes of this section—

(1) IN GENERAL.—The term "specified foreign corporation" means any foreign corporation—

(A) which is—

(i) treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, or

(ii) a foreign personal holding company (as defined in section 552), and

(B) with respect to which the ownership requirements of paragraph (2) are met.

(2) OWNERSHIP REQUIREMENTS.—

(A) IN GENERAL.—The ownership requirements of this paragraph are met with respect to any foreign corporation if a United States shareholder owns, on each testing day, more than 50 percent of—

(i) the total voting power of all classes of stock of such corporation entitled to vote, or

(ii) the total value of all classes of stock of such corporation.

(B) OWNERSHIP.—For purposes of subparagraph (A), the rules of subsections (a) and (b) of section 958 and sections 551(f) and 554, whichever are applicable, shall apply in determining ownership. *f.c. look thru attribution*

(3) UNITED STATES SHAREHOLDER.—

(A) IN GENERAL.—The term "United States shareholder" has the meaning given to such term by section 951(b), except that, in the case of a foreign corporation having related person insurance income (as defined in section 953(c)(2)), the Secretary may treat any person as a United States shareholder for purposes of this section if such person is treated as a United States shareholder under section 953(c)(1).

(B) FOREIGN PERSONAL HOLDING COMPANIES.—In the case of any foreign personal holding company (as defined in section 552) which is not a specified foreign corporation by reason of paragraph (1)(A)(i), the term "United States shareholder" means any person who is treated as a United States shareholder under section 551.

[Sec. 898(c)]

(c) DETERMINATION OF REQUIRED YEAR.—

(1) CONTROLLED FOREIGN CORPORATIONS.—

(A) IN GENERAL.—In the case of a specified foreign corporation described in subsection (b)(1)(A)(i), the required year is—

(i) the majority U.S. shareholder year, or

(ii) if there is no majority U.S. shareholder year, the taxable year prescribed under regulations.

(B) 1-MONTH DEFERRAL ALLOWED.—A specified foreign corporation may elect, in lieu of the taxable year under subparagraph (A)(i), a taxable year beginning 1 month earlier than the majority U.S. shareholder year.

(C) MAJORITY U.S. SHAREHOLDER YEAR.—

Sec. 898

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(i) **IN GENERAL.**—For purposes of this subsection, the term "majority U.S. shareholder year" means the taxable year (if any) which, on each testing day, constituted the taxable year of—

(I) each United States shareholder described in subsection (b)(2)(A), and

(II) each United States shareholder not described in subclause (I) whose stock was treated as owned under subsection (b)(2)(B) by any shareholder described in such subclause.

(ii) **TESTING DAY.**—The testing days shall be—

(I) the first day of the corporation's taxable year (determined without regard to this section), or

(II) the days during such representative period as the Secretary may prescribe.

(2) **FOREIGN PERSONAL HOLDING COMPANIES.**—In the case of a foreign personal holding company described in subsection (b)(3)(B), the required year shall be determined under paragraph (1), except that subparagraph (B) of paragraph (1) shall not apply.

**Amendments**

P.L. 101-239, § 7401(a):

Act Sec. 7401(a) amended subpart D of part II of subchapter N of chapter 1 by adding at the end thereof a new section 898 to read as above.

The above amendment applies to tax years of foreign corporations beginning after July 10, 1989. For special rules, see Act Sec. 7401(d)(2), below.

Act Sec. 7401(d)(2) provides:

(2) **SPECIAL RULES.**—If any foreign corporation is required by the amendments made by this section to change its taxable year for its first taxable year beginning after July 10, 1989—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as having been made with the consent of the Secretary of the Treasury or his delegate, and

(C) if, by reason of such change, any United States person is required to include in gross income for 1 taxable year amounts attributable to 2 taxable years of such foreign corporation, the amount which would otherwise be required to be included in gross income for such 1 taxable year by reason of the short taxable year of the foreign corporation resulting from such change shall be included in gross income ratably over the 4-taxable-year period beginning with such 1 taxable year.

**PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES**

- Subpart A. Foreign tax credit.
- Subpart B. Earned income of citizens of United States.
- Subpart C. Taxation of foreign sales corporations.
- Subpart D. Possessions of the United States.
- Subpart E. China Trade Act corporations.
- Subpart F. Controlled foreign corporations.
- Subpart G. Export trade corporations.
- Subpart H. [Repealed.]
- Subpart I. Admissibility of documentation maintained in foreign countries.

**Subpart A—Foreign Tax Credit**

- Sec. 901. Taxes of foreign countries and of possessions of United States.
- Sec. 902. Deemed paid credit where domestic corporation owns 10 percent or more of voting stock of foreign corporation.
- Sec. 903. Credit for taxes in lieu of income, etc., taxes.
- Sec. 904. Limitation on credit.
- Sec. 905. Applicable rules.
- Sec. 906. Nonresident alien individuals and foreign corporations.
- Sec. 907. Special rules in case of foreign oil and gas income.
- Sec. 908. Reduction of credit for participation in or cooperation with an international boycott.

Internal Revenue Code

**Sec. 898(c)**

ished. Three Assistant Commissioners, all in the classified civil service, are authorized, and will be available, to perform such functions as may be assigned to them. The intention of the Secretary of the Treasury under the comprehensive reorganization is to utilize one Assistant Commissioner to assist the Commissioner of Internal Revenue in supervising the operations of the district offices, another Assistant Commissioner to aid in the preparation of technical rulings and decisions, and the third Assistant Commissioner to supervise for the Commissioner the inspection activities of the Bureau.

Two additional advantages will be obtained when the reorganization around this new framework is completed.

First, the strong inspection service which the Secretary is establishing will keep the work of the Bureau under close and continuous observation. Working under the direct control of the Commissioner of Internal Revenue, it will be responsible for promptly detecting and investigating any irregularities.

Second, the new pattern of organization will strengthen and clarify lines of responsibility throughout the Bureau, thus simplifying and making more effective and uniform the management control of the organization. This is essential in any effort to provide our principal revenue collection agency the best possible administration.

In order to eliminate Presidential appointment and senatorial confirmation with respect to the Assistant General Counsel for the Bureau of Internal Revenue, and in order to provide a method of appointment comparable to that obtaining in the case of other assistant general counsel of the Department of the Treasury, plan No. 1 abolishes that office and provides in lieu thereof a new office of Assistant General Counsel with appointment under the classified civil service.

The success of the reorganization of the Bureau of Internal Revenue will to a considerable extent depend upon the ability to attract the best qualified persons to the key positions throughout the Bureau. In order to do so, it is necessary to make provision for more adequate salaries for such key positions. Plan No. 1 establishes in the Bureau of Internal Revenue a maximum of 70 offices with titles determined by the Secretary of the Treasury. Those offices are in addition to the offices with specific titles also provided for in plan No. 1 and to any positions established under other authority vested in the Department of the Treasury. The compensation of these officials will be fixed under the Classification Act of 1949, as amended, but without regard to the numerical limitations on positions set forth in section 505 of that act. This provision will enable the Chairman of the Civil Service Commission, or the President (as the case may be), to fix rates of pay for those offices in excess of the rates established in the Classification Act of 1949 for grade GS-15 whenever the standards of the classification laws so permit.

All organizational changes under plan No. 1 will be put into effect as soon as it is possible to do so without disrupting the continued collection of revenue. Plan No. 1 will in any event be effective in its entirety, no later than December 1, 1952.

The taking effect of the reorganizations provided for in Reorganization Plan No. 1 of 1952 will make possible many benefits in improved organization and operations which may be expected to produce substantial savings in future years. Those savings should not be expected to be reflected in an immediate reduction in expenditure by the Bureau of Internal Revenue but in an improved service to the public and a more efficient collection of revenue.

It should be emphasized that abolition by plan No. 1 of the offices of collectors and others will in no way prejudice any right or potential right of any taxpayer. The abolition of offices by plan No. 1 will not abolish any rights, privileges, powers, duties, immunities, liabilities, obligations, or other attributes of those offices except as they relate to matters of appointment, tenure, and compensation inconsistent with plan No. 1. Under the Reorganization Act of 1949, all of these attributes of office will attach to the office to which the functions of the abolished office are delegated by the Secretary of the Treasury.

After investigation I have found and hereby declare that each reorganization included in Reorganization Plan No. 1 of 1952 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949.

I have found and hereby declare that it is necessary to include in the accompanying Reorganization Plan No. 1, by reason of reorganizations

made hereby, provisions for the appointment and compensation of the officers specified therein. The rates of compensation fixed for these officers are not in excess of those which I have found to prevail in respect of comparable officers in the executive branch.

I cannot emphasize too strongly the importance which should be attached to the reorganization plan that I am now transmitting to the Congress. The fair and efficient administration of the Federal internal-revenue laws is of vital concern to every citizen. All of us have a right to insist that the Bureau of Internal Revenue be provided with the finest organization that can be devised. All of us are entitled to have that organization manned by personnel who get their jobs and keep them solely because of their own integrity and competence. This reorganization plan will be a major step in achieving those objectives.

HARRY S. TRUMAN

## § 7805. Rules and regulations

(a) **Authorization.**—Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

### (b) **Retroactivity of regulations.**—

(1) **In general.**—Except as otherwise provided in this subsection, no temporary, proposed, or final regulation relating to the internal revenue laws shall apply to any taxable period ending before the earliest of the following dates:

(A) The date on which such regulation is filed with the Federal Register.

(B) In the case of any final regulation, the date on which any proposed or temporary regulation to which such final regulation relates was filed with the Federal Register.

(C) The date on which any notice substantially describing the expected contents of any temporary, proposed, or final regulation is issued to the public.

(2) **Exception for promptly issued regulations.**—Paragraph (1) shall not apply to regulations filed or issued within 18 months of the date of the enactment of the statutory provision to which the regulation relates.

(3) **Prevention of abuse.**—The Secretary may provide that any regulation may take effect or apply retroactively to prevent abuse.

(4) **Correction of procedural defects.**—The Secretary may provide that any regulation may apply retroactively to correct a procedural defect in the issuance of any prior regulation.

(5) **Internal regulations.**—The limitation of paragraph (1) shall not apply to any regulation relating to internal Treasury Department policies, practices, or procedures.

(6) **Congressional authorization.**—The limitation of paragraph (1) may be superseded by a legislative

grant from Congress authorizing the Secretary to prescribe the effective date with respect to any regulation.

(7) **Election to apply retroactively.**—The Secretary may provide for any taxpayer to elect to apply any regulation before the dates specified in paragraph (1).

(8) **Application to rulings.**—The Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect.

(c) **Preparation and distribution of regulations, forms, stamps, and other matters.**—The Secretary shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

(d) **Manner of making elections prescribed by Secretary.**—Except to the extent otherwise provided by this title, any election under this title shall be made at such time and in such manner as the Secretary shall prescribe.

(e) **Temporary regulations.**—

(1) **Issuance.**—Any temporary regulation issued by the Secretary shall also be issued as a proposed regulation.

(2) **3-year duration.**—Any temporary regulation shall expire within 3 years after the date of issuance of such regulation.

(f) **Review of impact of regulations on small business.**—

(1) **Submissions to small business administration.**—After publication of any proposed or temporary regulation by the Secretary, the Secretary shall submit such regulation to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of such regulation on small business. Not later than the date 4 weeks after the date of such submission, the Chief Counsel for Advocacy shall submit comments on such regulation to the Secretary.

(2) **Consideration of comments.**—In prescribing any final regulation which supersedes a proposed or temporary regulation which had been submitted under this subsection to the Chief Counsel for Advocacy of the Small Business Administration—

(A) the Secretary shall consider the comments of the Chief Counsel for Advocacy on such proposed or temporary regulation, and

(B) the Secretary shall discuss any response to such comments in the preamble of such final regulation.

(3) **Submission of certain final regulations.**—In the case of the promulgation by the Secretary of any final regulation (other than a temporary regulation) which does not supersede a proposed regulation, the requirements of paragraphs (1) and (2) shall apply, except that—

(A) the submission under paragraph (1) shall be made at least 4 weeks before the date of such promulgation, and

(B) the consideration (and discussion) required under paragraph (2) shall be made in connection with the promulgation of such final regulation.

(Aug. 16, 1954, c. 736, 68A Stat. 917; Oct. 4, 1976, Pub.L. 94-455, Title XIX, § 1906(b)(13)(A), 90 Stat. 1834; July 11, 1984, Pub.L. 98-369, Div. A, Title I, § 43(b), 98 Stat. 578; Nov. 10, 1988, Pub.L. 100-647, Title VI, § 6232(a), 102 Stat. 3734; Nov. 5, 1990, Pub.L. 101-508, Title XI, § 11621(a), 104 Stat. 1388-503; July 30, 1996, Pub.L. 104-168, Title XI, § 1101(a), 110 Stat. 1468; July 22, 1998, Pub.L. 105-206, Title III, § 3704, 112 Stat. 777.)

#### HISTORICAL AND STATUTORY NOTES

##### Effective Dates

**1996 Act.** Section 1101(b) of Pub.L. 104-168 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to regulations which relate to statutory provisions enacted on or after the date of the enactment of this Act [July 30, 1996]."

**1990 Act.** Section 11621(b) of Pub.L. 101-508 provided that: "The amendment made by subsection (a) [amending subsec. (f) of this section] shall apply to regulations issued after the date which is 30 days after the date of the enactment of this Act [Nov. 5, 1990]."

**1988 Act.** Section 6232(b) of Pub.L. 100-647 provided that: "The amendments made by this section [enacting subsecs. (e), (f) of this section] shall apply to any regulation issued after the date which is 10 days after the date of the enactment of this Act [Nov. 10, 1988]."

**1984 Act.** Amendment by Pub.L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub.L. 98-369, set out as a note under section 1271 of this title.

**1976 Act.** Amendment by section 1906(b)(13)(A) of Pub.L. 94-455 effective the first day of the first month which begins more than 90 days after Oct. 4, 1976, see section 1906(d) of Pub.L. 94-455, set out as a note under section 6013 of this title.

##### Internet Availability of Documents

Section 2003(d) of Pub.L. 105-206 provided that: "In the case of taxable periods beginning after December 31, 1998, the Secretary of the Treasury or the Secretary's delegate shall establish procedures for all tax forms, instructions, and publications created in the most recent 5-year period to be made available electronically on the Internet in a searchable database at approximately the same time such records are available to the public in paper form. In addition, in the case of taxable periods beginning after December 31, 1998, the Secretary of the Treasury or the Secretary's delegate shall, to the extent practicable, establish procedures for other taxpayer guidance to be made available electronically on the Internet in a searchable database at approximately the same time such guidance is available to the public in paper form."

[Provisions of this note, enacted by section 2003 of Pub.L. 105-206 effective July 22, 1998, see section 2003(f) of Pub.L. 105-206, set out as a note under section 606 of this title.]

#### § 7806. Construction of title

(a) **Cross references.**—The cross references in this title to other portions of the title, or other provisions of