

## Effective Date and Application of Section 960(d)(4)

Notice 2025-77

### SECTION 1. PURPOSE

This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue proposed regulations regarding section 960(d)(4), which disallows a foreign tax credit for 10 percent of any foreign income taxes paid or accrued (or deemed paid under section 960(b)(1)) with respect to any amount excluded from gross income under section 959(a) by reason of an inclusion in gross income under section 951A(a) (the forthcoming proposed regulations). Section 960(d)(4) was added to the Internal Revenue Code (Code) by section 70312(b) of Public Law 119-21, 139 Stat. 72 (July 4, 2025), commonly known as the One, Big, Beautiful Bill Act (OBBBA). Section 70312(c)(2) of the OBBBA provides that section 960(d)(4) applies to foreign income taxes paid or accrued (or deemed paid under section 960(b)(1)) with respect to any amount excluded from gross income under section 959(a) by reason of an inclusion in gross income under section 951A(a) after June 28, 2025.

### SECTION 2. BACKGROUND

Section 901(a) generally provides that a taxpayer choosing to credit foreign income taxes is allowed a credit for certain foreign income taxes paid or accrued by the taxpayer plus, in the case of a domestic corporation, the taxes deemed to have been

paid by the domestic corporation under section 960. Section 960(d) provides that, if any amount is includible in the gross income of a domestic corporation under section 951A (section 951A inclusion), the domestic corporation is deemed to have paid foreign income taxes with respect to the section 951A inclusion. Section 960(b)(1) provides that a United States shareholder of a controlled foreign corporation (within the meaning of section 957(a)) (CFC) is deemed to have paid the CFC's foreign income taxes that the United States shareholder has not been previously deemed to pay and that are properly attributable to a distribution from the CFC that the United States shareholder excludes from its income under section 959(a) (a section 959(a) distribution).

Prior to the OBBBA, section 960(d)(1) provided that a domestic corporation that is a United States shareholder is deemed to have paid 80 percent of the amount equal to the product of the United States shareholder's inclusion percentage (the ratio of its section 951A inclusion to its aggregate pro rata share of the tested income of its CFCs) and the aggregate of the tested foreign income taxes paid or accrued by its CFCs. Thus, section 960(d)(1) (prior to the OBBBA) effectively reduced the amount of foreign income taxes deemed paid with respect to a section 951A inclusion by 20 percent. The OBBBA changed the section 960(d)(1) reduction from 20 percent to 10 percent.

Section 960(d)(4), as enacted by the OBBBA, correspondingly disallows a credit for 10 percent of the foreign income taxes paid or accrued with respect to a distribution of the previously taxed earnings and profits (PTEP) resulting from a section 951A inclusion. Specifically, section 960(d)(4) disallows a foreign tax credit for 10 percent of

any foreign income taxes paid or accrued (or deemed paid under section 960(b)(1)) with respect to any amount excluded from gross income under section 959(a) by reason of a section 951A inclusion.

Section 959(a) generally excludes a CFC's earnings and profits from the gross income of a United States shareholder when distributed to the extent the United States shareholder has already included the amounts in gross income under certain provisions of the Code, including section 951A(a). For purposes of determining the amount of foreign income taxes deemed paid under section 960(b)(1) with respect to a section 959(a) distribution, §1.960-3 requires the establishment and maintenance of accounts that track a foreign corporation's PTEP and foreign income taxes attributable to the PTEP. As relevant for purposes of this notice, §1.960-3 requires PTEP within an annual PTEP account (as defined in §1.960-3(c)(1)) to be assigned to one or more of the ten PTEP groups that are defined and set forth in §1.960-3(c)(2). Proposed amendments to the regulations under sections 959 and 960, including proposed amendments to §1.960-3, were published in the Federal Register on December 2, 2024 (89 FR 95362) (the 2024 proposed PTEP regulations).

### SECTION 3. REGULATIONS TO BE ISSUED

#### .01 Application of Section 960(d)(4)

(1) *In General.* The forthcoming proposed regulations would include the guidance provided in this section 3.01. The Treasury Department and the IRS also intend to

modify the 2024 proposed PTEP regulations to be consistent with the guidance provided in this section 3.01.

(2) *Effective Date of Section 960(d)(4)*. The Treasury Department and the IRS understand that questions have arisen regarding the effective date of section 960(d)(4) provided in section 70312(c)(2) of the OBBBA. Section 960(d)(4) applies to the foreign income taxes paid or accrued (or deemed paid under section 960(b)(1)) with respect to a section 959(a) distribution to the extent the PTEP results from a section 951A inclusion of a United States shareholder in a taxable year ending after June 28, 2025. The relevant taxable year is that of the United States shareholder, and therefore the section 951A inclusion may include tested income of a CFC from a taxable year of the CFC that ends on or before June 28, 2025 (for instance, the section 951A inclusion for a United States shareholder's taxable year ending December 31, 2025, may include tested income from a CFC's taxable year ending May 31, 2025).

If a United States shareholder has a section 951A inclusion in a taxable year ending on or before June 28, 2025, then section 960(d)(4) will not apply to foreign income taxes paid or accrued (or deemed paid under section 960(b)(1)) with respect to any amount that is excluded from gross income under section 959(a) by reason of that inclusion, even if those foreign income taxes are paid or accrued (or deemed paid under section 960(b)(1)) after June 28, 2025.

(3) *Section 951A PTEP Group*. The "section 951A PTEP" group set forth in §1.960-3(c)(2)(viii) will be divided into two groups: (1) PTEP resulting from section 951A

inclusions in a taxable year of a United States shareholder ending on or before June 28, 2025 (pre-06/29/25 section 951A PTEP), and (2) PTEP resulting from section 951A inclusions in a taxable year of a United States shareholder ending after June 28, 2025 (post-06/28/25 section 951A PTEP).

(4) *Foreign Income Taxes With Respect to Distributions of Post-06/28/25 Section 951A PTEP.* No credit is allowed under section 901 for 10 percent of any foreign income taxes paid or accrued (or deemed paid under section 960(b)(1)) with respect to a section 959(a) distribution of post-06/28/25 section 951A PTEP. The foreign income taxes with respect to a section 959(a) distribution of post-06/28/25 section 951A PTEP are those taxes that are allocated and apportioned to the post-06/28/25 section 951A PTEP group under §1.861-20.

(5) *Reclassified Section 951A PTEP.* Rules similar to the rules set forth in sections 3.01(3) and 3.01(4) of this notice will apply to the “reclassified section 951A PTEP” group set forth in §1.960-3(c)(2)(iv).

.02 Example

The following example illustrates the application of section 3.01 of this notice.

Example—(i) Facts. USP, a domestic corporation, owns all the stock of a single foreign corporation (FC). FC, a Country X entity that is a CFC, has the U.S. dollar as its functional currency. Both FC and USP use the calendar year as their taxable year. FC does not have any accumulated earnings and profits as of the beginning of its 2024 taxable year. FC earns tested income of \$100x for each of its 2024 and 2025 taxable

years, and USP has a section 951A inclusion of \$100x in each of its 2024 and 2025 taxable years. FC has no income or loss in any of its subsequent taxable years. On January 1, 2026, FC makes a distribution of \$150x to USP, which is treated as a distribution of property for both Country X law and Federal income tax purposes. Country X imposes a withholding tax (as defined in section 901(k)(1)(B)) of \$30x with respect to the distribution. For its 2026 taxable year, USP claims the foreign tax credit under section 901.

(ii) Analysis—(A) FC has earnings and profits of \$100x within the annual PTEP account in the section 951A category for its 2024 taxable year. Under section 3.01(3) of this notice, the \$100x of PTEP, which results from a section 951A inclusion of USP in a taxable year of USP ending on or before June 28, 2025, constitutes pre-06/29/25 section 951A PTEP. FC has earnings and profits of \$100x within the annual PTEP account in the section 951A category for its 2025 taxable year. Under section 3.01(3) of this notice, the \$100x of PTEP, which results from a section 951A inclusion of USP in a taxable year of USP ending after June 28, 2025, constitutes post-06/28/25 section 951A PTEP, regardless of whether FC earned the related tested income before, on, or after June 28, 2025.

(B) Under section 959(c) and §1.959-3(b), FC's \$150x distribution on January 1, 2026, constitutes a distribution of \$100x of FC's PTEP for its 2025 taxable year, and \$50x of FC's PTEP for its 2024 taxable year. Under section 3.01(4) of this notice and §1.861-20(d)(3)(i)(B), \$100x of the foreign gross income related to the \$150x

distribution is assigned to the post-06/28/25 section 951A PTEP group, and \$50x is assigned to the pre-06/29/25 section 951A PTEP group. Under section 3.01(4) of this notice and §1.861-20(f), \$20x of the \$30x of Country X withholding tax ( $\$30x \times \$100x/\$150x$ ) is allocated and apportioned to the post-06/28/25 section 951A PTEP group, and the remaining \$10x ( $\$30x \times \$50x/\$150x$ ) is allocated and apportioned to the pre-06/29/25 section 951A PTEP group.

(C) Under section 960(d)(4) and section 3.01(4) of this notice, \$2x (that is, 10%) of the \$20x of foreign tax credits otherwise allowable under section 901 with respect to the \$20x of Country X withholding tax allocated and apportioned to the post-06/28/25 section 951A PTEP group is disallowed.

#### SECTION 4. APPLICABILITY DATE AND RELIANCE

The forthcoming proposed regulations would apply to foreign income taxes paid or accrued (or deemed paid under section 960(b)(1)) with respect to any amount excluded from gross income under section 959(a) by reason of an inclusion in the gross income of a United States shareholder under section 951A(a), provided that the inclusion is in a taxable year of the United States shareholder ending after June 28, 2025. Taxpayers may rely on the guidance provided in section 3 of this notice for taxable years of United States shareholders beginning before the date the proposed regulations are published in the Federal Register, provided taxpayers follow the guidance in its entirety and in a consistent manner for all applicable taxable years.

## SECTION 5. DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Le Chen of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, contact Mr. Chen at (202) 317-6936 (not a toll-free call).