

Subsec. (d)(2). Pub. L. 109-135, § 403(q)(5), substituted “directly allocable” for “properly allocated and apportioned”.

Subsec. (d)(4). Pub. L. 109-135, § 403(q)(6), added par. (4).

Subsec. (e)(1). Pub. L. 109-135, § 403(q)(7), inserted “which are imposed by foreign countries and possessions of the United States and are” after “taxes” in concluding provisions.

Subsec. (f). Pub. L. 109-135, § 403(q)(8), inserted “on or” before “before the due date” in concluding provisions.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2005 AMENDMENT

Amendments by Pub. L. 109-135 effective as if included in the provisions of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which they relate, see section 403(nn) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending on or after Oct. 22, 2004, see section 422(d) of Pub. L. 108-357, set out as an Effective Date of 2004 Amendments note under section 56 of this title.

SUBPART G—EXPORT TRADE CORPORATIONS

Sec.

970. Reduction of subpart F income of export trade corporations.

971. Definitions.

[972. Repealed.]

Editorial Notes

AMENDMENTS

1976—Pub. L. 94-455, title XIX, § 1901(b)(27)(B), Oct. 4, 1976, 90 Stat. 1799, struck out item 972 “Consolidation of group of export trade corporations”.

1962—Pub. L. 87-834, § 12(a), Oct. 16, 1962, 76 Stat. 1027, added heading of subpart G, and items 970 to 972.

§ 970. Reduction of subpart F income of export trade corporations

(a) Export trade income constituting foreign base company income

(1) In general

In the case of a controlled foreign corporation (as defined in section 957) which for the taxable year is an export trade corporation, the subpart F income (determined without regard to this subpart) of such corporation for such year shall be reduced by an amount equal to so much of the export trade income (as defined in section 971(b)) of such corporation for such year as constitutes foreign base company income (as defined in section 954), but only to the extent that such amount does not exceed whichever of the following amounts is the lesser:

(A) an amount equal to 1½ times so much of the export promotion expenses (as defined in section 971(d)) of such corporation for such year as is properly allocable to the export trade income which constitutes foreign base company income of such corporation for such year, or

(B) an amount equal to 10 percent of so much of the gross receipts for such year (or, in the case of gross receipts arising from commissions, fees, or other compensation

for its services, so much of the gross amount upon the basis of which such commissions, fees, or other compensation is computed) accruing to such export trade corporation from the sale, installation, operation, maintenance, or use of property in respect of which such corporation derives export trade income as is properly allocable to the export trade income which constitutes foreign base company income of such corporation for such year.

The allocations with respect to export trade income which constitutes foreign base company income under subparagraphs (A) and (B) shall be made under regulations prescribed by the Secretary.

(2) Overall limitation

The reduction under paragraph (1) for any taxable year shall not exceed an amount which bears the same ratio to the increase in the investments in export trade assets (as defined in section 971(c)) of such corporation for such year as the export trade income which constitutes foreign base company income of such corporation for such year bears to the entire export trade income of such corporation for such year.

[(b) Repealed. Pub. L. 115-97, title I, § 14212(b)(5), Dec. 22, 2017, 131 Stat. 2217]

(c) Investments in export trade assets

(1) Amount of investments

For purposes of this section, the amount taken into account with respect to any export trade asset shall be its adjusted basis, reduced by any liability to which the asset is subject.

(2) Increase in investments in export trade assets

For purposes of subsection (a), the amount of increase in investments in export trade assets of any controlled foreign corporation for any taxable year is the amount by which—

(A) the amount of such investments at the close of the taxable year, exceeds

(B) the amount of such investments at the close of the preceding taxable year.

(3) Decrease in investments in export trade assets

For purposes of subsection (b), the amount of decrease in investments in export trade assets of any controlled foreign corporation for any taxable year is the amount by which—

(A) the amount of such investments at the close of the preceding taxable year (reduced by an amount equal to the amount of net loss sustained during the taxable year with respect to export trade assets), exceeds

(B) the amount of such investments at the close of the taxable year.

(4) Special rule

A United States shareholder of an export trade corporation may, under regulations prescribed by the Secretary, make the determinations under paragraphs (2) and (3) as of the close of the 75th day after the close of the years referred to in such paragraphs in lieu of on the last day of such years. A United States

shareholder of an export trade corporation may, under regulations prescribed by the Secretary, make the determinations under paragraphs (2) and (3) with respect to export trade assets described in section 971(c)(3) as of the close of the years following the years referred to in such paragraphs, or as of the close of such longer period of time as such regulations may permit, in lieu of on the last day of such years and in lieu of on the day prescribed in the preceding sentence. Any election under this paragraph made with respect to any taxable year shall apply to such year and to all succeeding taxable years unless the Secretary consents to the revocation of such election.

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1027; amended Pub. L. 94-455, title XIX, §§1901(b)(27)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1799, 1834; Pub. L. 115-97, title I, §14212(b)(5), Dec. 22, 2017, 131 Stat. 2217.)

Editorial Notes

AMENDMENTS

2017—Subsec. (b). Pub. L. 115-97 struck out subsec. (b). Text read as follows: “Each United States shareholder of a controlled foreign corporation which for any prior taxable year was an export trade corporation shall include in his gross income under section 951(a)(1)(A)(ii), as an amount to which section 955 (relating to withdrawal of previously excluded subpart F income from qualified investment) applies, his pro rata share of the amount of decrease in the investments in export trade assets of such corporation for such year, but only to the extent that his pro rata share of such amount does not exceed an amount equal to—

“(1) his pro rata share of the sum of (A) the amounts by which the subpart F income of such corporation was reduced for all prior taxable years under subsection (a), and (B) the amounts not included in subpart F income (determined without regard to this subpart) for all prior taxable years by reason of the treatment (under section 972 as in effect before the date of the enactment of the Tax Reform Act of 1976) of two or more controlled foreign corporations which are export trade corporations as a single controlled foreign corporation, reduced by

“(2) the sum of the amounts which were included in his gross income under section 951(a)(1)(A)(ii) under the provisions of this subsection for all prior taxable years.”

1976—Subsec. (a)(1). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (b)(1). Pub. L. 94-455, §1901(b)(27)(A), substituted “treatment (under section 972 as in effect before the date of enactment of the Tax Reform Act of 1976) of two or more controlled foreign corporations which are export trade corporations as a single controlled corporation” for “application of section 972” after “reason of the”.

Subsec. (c)(4). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary” in three places.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14212(c) of Pub. L. 115-97, set out as a note under section 851 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(b)(27)(A) of Pub. L. 94-455 applicable with respect to taxable years beginning after

Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EXPORT TRADE CORPORATIONS

Pub. L. 92-178, title V, §505(a), (b), Dec. 10, 1971, 85 Stat. 551, provided that:

“(a) USE OF TERMS.—Except as otherwise expressly provided, whenever in this section a reference is made to a section, chapter, or other provision, the reference shall be considered to be made to a section, chapter, or other provision of the Internal Revenue Code of 1954, and terms used in this section shall have the same meaning as when used in such Code.

“(b) TRANSFER TO A DISC OF ASSETS OF EXPORT TRADE CORPORATION.—

“(1) IN GENERAL.—If a corporation (hereinafter in this section called ‘parent’) owns all of the outstanding stock of an export trade corporation (as defined in section 971), and the export trade corporation, during a taxable year beginning before January 1, 1976, transfers property, without receiving consideration, to a DISC (as defined in section 992(a)) all of whose outstanding stock is owned by the parent, and if the amount transferred by the export trade corporation is not less than the amount of its untaxed subpart F income (as defined in paragraph (2) of this subsection) at the time of such transfer, then—

“(A) notwithstanding section 367 or any other provision of chapter 1, no gain or loss to the export trade corporation, the parent, or the DISC shall be recognized by reason of such transfer;

“(B) the earnings and profits of the DISC shall be increased by the amount transferred to it by the export trade corporation and such amount shall be included in the accumulated DISC income, and for purposes of section 861(a)(2)(D) shall be considered to be qualified export receipts;

“(C) the adjusted basis of the assets transferred to the DISC shall be the same in the hands of the DISC as in the hands of the export trade corporation;

“(D) the earnings and profits of the export trade corporation shall be reduced by the amount transferred to the DISC, to the extent thereof, with the reduction being applied first to the untaxed subpart F income and then to the other earnings and profits in the order in which they were most recently accumulated;

“(E) the basis of the parent’s stock in the export trade corporation shall be decreased by the amount obtained by multiplying its basis in such stock by a fraction the numerator of which is the amount transferred to the DISC and the denominator of which is the aggregate adjusted basis of all the assets of the export trade corporation immediately before such transfer;

“(F) the basis of the parent’s stock in the DISC shall be increased by the amount of the reduction under subparagraph (E) of its basis in the stock of the export trade corporation;

“(G) the property transferred to the DISC shall not be considered to reduce the investments of the export trade corporation in export trade assets for purposes of applying [former] section 970(b); and

“(H) any foreign income taxes which would have been deemed under [former] section 902 to have been paid by the parent if the transfer had been made to the parent shall be treated as foreign income taxes paid by the DISC.

For purposes of this section, the amount transferred by the export trade corporation to the DISC shall be the aggregate of the adjusted basis of the properties transferred, with proper adjustment for any indebtedness secured by such property or assumed by the DISC in connection with the transfer. For purposes of this section, a foreign corporation which qualified as an export trade corporation for any 3 taxable years beginning before November 1, 1971, shall be treated as an export trade corporation.

“(2) DEFINITION OF UNTAXED SUBPART F INCOME.—For purposes of this section, the term ‘untaxed subpart F

income' means with respect to an export trade corporation the amount by which—

“(A) the sum of the amount by which the subpart F income of such corporation was reduced for the taxable year and all prior taxable years under section 970(a) and the amounts not included in subpart F income (determined without regard to subpart G of subchapter N of chapter 1) for all prior taxable years by reason of the application of section 972, exceeds

“(B) the sum of the amounts which were included in the gross income of the shareholders of such corporation under [former] section 951(a)(1)(A)(ii) and under the provision of [former] section 970(b) for all prior taxable years, determined without regard to the transfer of property described in paragraph (1) of this subsection.

“(3) SPECIAL CASES.—If the provisions of paragraph (1) of this subsection are not applicable solely because the export trade corporation or the DISC, or both, are not owned in the manner prescribed in such paragraph, the provisions shall nevertheless be applicable in such cases to the extent, and in accordance with such rules, as may be prescribed by the Secretary or his delegate.

“(4) TREATMENT OF EXPORT TRADE ASSETS.—If the provisions of this subsection are applicable, accounts receivable held by an export trade corporation and transferred to a DISC, to the extent such receivables were export trade assets in the hands of the export trade corporation, shall be treated as qualified export assets for purposes of section 993(b).”

§ 971. Definitions

(a) Export trade corporations

For purposes of this subpart, the term “export trade corporation” means—

(1) In general

A controlled foreign corporation (as defined in section 957) which satisfies the following conditions:

(A) 90 percent or more of the gross income of such corporation for the 3-year period immediately preceding the close of the taxable year (or such part of such period subsequent to the effective date of this subpart during which the corporation was in existence) was derived from sources without the United States, and

(B) 75 percent or more of the gross income of such corporation for such period constituted gross income in respect of which such corporation derived export trade income.

(2) Special rule

If 50 percent or more of the gross income of a controlled foreign corporation in the period specified in subsection (a)(1)(A) is gross income in respect of which such corporation derived export trade income in respect of agricultural products grown in the United States, it may qualify as an export trade corporation although it does not meet the requirements of subsection (a)(1)(B).

(3) Limitation

No controlled foreign corporation may qualify as an export trade corporation for any taxable year beginning after October 31, 1971, unless it qualified as an export trade corporation for any taxable year beginning before such date. If a corporation fails to qualify as an export trade corporation for a period of any 3

consecutive taxable years beginning after such date, it may not qualify as an export trade corporation for any taxable year beginning after such period.

(b) Export trade income

For the purposes of this subpart, the term “export trade income” means net income from—

(1) the sale to an unrelated person for use, consumption, or disposition outside the United States of export property (as defined in subsection (e)), or from commissions, fees, compensation, or other income from the performance of commercial, industrial, financial, technical, scientific, managerial, engineering, architectural, skilled, or other services in respect to such sales or in respect of the installation or maintenance of such export property;

(2) commissions, fees, compensation, or other income from commercial, industrial, financial, technical, scientific, managerial, engineering, architectural, skilled, or other services performed in connection with the use by an unrelated person outside the United States of patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchises, and other like property acquired or developed and owned by the manufacturer, producer, grower, or extractor of export property in respect of which the export trade corporation earns export trade income under paragraph (1);

(3) commissions, fees, rentals, or other compensation or income attributable to the use of export property by an unrelated person or attributable to the use of export property in the rendition of technical, scientific, or engineering services to an unrelated person; and

(4) interest from export trade assets described in subsection (c)(4).

For purposes of paragraph (3), if a controlled foreign corporation receives income from an unrelated person attributable to the use of export property in the rendition of services to such unrelated person together with income attributable to the rendition of other services to such unrelated person, including personal services, the amount of such aggregate income which shall be considered to be attributable to the use of the export property shall (if such amount cannot be established by reference to transactions between unrelated persons) be that part of such aggregate income which the cost of the export property consumed in the rendition of such services (including a reasonable allowance for depreciation) bears to the total costs and expenses attributable to such aggregate income.

(c) Export trade assets

For purposes of this subpart, the term “export trade assets” means—

(1) working capital reasonably necessary for the production of export trade income,

(2) inventory of export property held for use, consumption, or disposition outside the United States,

(3) facilities located outside the United States for the storage, handling, transportation, packaging, or servicing of export property, and

(4) evidences of indebtedness executed by persons, other than related persons, in connec-