

- (4) providing for alternative adjustments to the application of section 905(c),
- (5) providing for the appropriate treatment of related party transactions (including transactions between qualified business units of the same taxpayer), and
- (6) setting forth procedures for determining the average exchange rate for any period.

(Added Pub. L. 99-514, title XII, §1261(a), Oct. 22, 1986, 100 Stat. 2590; amended Pub. L. 100-647, title I, § 1012(v)(5), Nov. 10, 1988, 102 Stat. 3529; Pub. L. 103-66, title XIII, §13231(c)(4)(C), Aug. 10, 1993, 107 Stat. 499; Pub. L. 104-188, title I, §1501(b)(9), Aug. 20, 1996, 110 Stat. 1826; Pub. L. 105-34, title XI, §1102(b)(2), (3), Aug. 5, 1997, 111 Stat. 966; Pub. L. 108-357, title IV, §413(c)(17), Oct. 22, 2004, 118 Stat. 1508.)

Editorial Notes

REFERENCES IN TEXT

The enactment of this subpart, referred to in subsec. (c)(1), probably means the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

AMENDMENTS

- 2004—Subsec. (b)(3). Pub. L. 108-357 struck out “, 551(a),” after “section 951(a)(1)(A)”.
- 1997—Subsec. (b)(3), (4). Pub. L. 105-34, §1102(b)(3), struck out “weighted” before “average exchange rate”.
- Subsec. (c)(6). Pub. L. 105-34, §1102(b)(2), added par. (6).
- 1996—Subsec. (b). Pub. L. 104-188 substituted “section 951(a)(1)(B)” for “subparagraph (B) or (C) of section 951(a)(1)” in closing provisions.
- 1993—Subsec. (b). Pub. L. 103-66 substituted “subparagraph (B) or (C) of section 951(a)(1)” for “section 951(a)(1)(B)” in last sentence.
- 1988—Subsec. (b). Pub. L. 100-647 substituted in par. (3) “section 951(a)(1)(A)” for “section 951(a)” and inserted at end “For purposes of the preceding sentence, any amount included in income under section 951(a)(1)(B) shall be treated as an actual distribution made on the last day of the taxable year for which such amount was so included.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to taxes paid or accrued in taxable years beginning after Dec. 31, 1997, see section 1102(c)(1) of Pub. L. 105-34, set out as a note under section 986 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104-188, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders

in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103-66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1986, with certain exceptions and qualifications, see section 1261(e) of Pub. L. 99-514, set out as a note under section 985 of this title.

PART IV—DOMESTIC INTERNATIONAL SALES CORPORATIONS

Subpart		Sec. ¹
A.	Treatment of qualifying corporations ...	991
B.	Treatment of distributions to shareholders	995

Editorial Notes

AMENDMENTS

1971—Pub. L. 92-178, title V, §501, Dec. 10, 1971, 85 Stat. 535, added part IV to subchapter N of chapter 1.

SUBPART A—TREATMENT OF QUALIFYING CORPORATIONS

Sec.	
991.	Taxation of a domestic international sales corporation.
992.	Requirements of a domestic international sales corporation.
993.	Definitions and special rules.
994.	Inter-company pricing rules.

§ 991. Taxation of a domestic international sales corporation

For purposes of the taxes imposed by this subtitle upon a DISC (as defined in section 992(a)), a DISC shall not be subject to the taxes imposed by this subtitle.

(Added Pub. L. 92-178, title V, §501, Dec. 10, 1971, 85 Stat. 535; amended Pub. L. 105-206, title VI, §6011(e)(1), July 22, 1998, 112 Stat. 818.)

Editorial Notes

AMENDMENTS

1998—Pub. L. 105-206 struck out “except for the tax imposed by chapter 5” before period at end.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates (section 1131(a) of Pub. L. 105-34), see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Pub. L. 92-178, title V, §507, Dec. 10, 1971, 85 Stat. 553, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Except as provided in section 505 of this title [amending section 971 of this title and en-

¹ Section numbers editorially supplied.

acting provisions set out as a note under section 970 of this title], the amendments made by sections 501 through 504 of this title [enacting this section and sections 992 to 994, 995 to 997, and 6686 of this title and amending sections 246, 861, 901, 904, 922, 931, 1014, 1504, 6011, 6072, and 6501 of this title] shall apply with respect to taxable years ending after December 31, 1971, except that a corporation may not be a DISC (as defined in section 992(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], added by section 501 of this title) for any taxable year beginning before January 1, 1972.”

TRANSITION RULES FOR DISC'S

Pub. L. 98-369, div. A, title VIII, §805(b), July 18, 1984, 98 Stat. 1001, as amended by Pub. L. 99-514, §2, title XVIII, §1876(h), (n), Oct. 22, 1986, 100 Stat. 2095, 2900, 2901, provided that:

“(1) CLOSE OF 1984 TAXABLE YEARS OF DISC'S.—

“(A) IN GENERAL.—For purposes of applying the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the taxable year of each DISC which begins before January 1, 1985, and which (but for this paragraph) would include January 1, 1985, shall close on December 31, 1984. For purposes of such Code, the requirements of section 992(a)(1)(B) of such Code (relating to percentage of qualified export assets on last day of the taxable year) shall not apply to any taxable year ending on December 31, 1984.

“(B) UNDERPAYMENTS OF ESTIMATED TAX.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, no addition to tax shall be made under section 6654 or 6655 of such Code with respect to any underpayment of any installment required to be paid before April 13, 1985, to the extent the underpayment was created or increased by reason of subparagraph (A).

“(2) EXEMPTION OF ACCUMULATED DISC INCOME FROM TAX.—

“(A) IN GENERAL.—For purposes of applying the Internal Revenue Code of 1986 with respect to actual distributions made after December 31, 1984, by a DISC or former DISC which was a DISC on December 31, 1984, any accumulated DISC income of a DISC or former DISC (within the meaning of section 996(f)(1) of such Code) which is derived before January 1, 1985, shall be treated as previously taxed income (within the meaning of section 996(f)(2) of such Code) with respect to which there had previously been a deemed distribution to which section 996(e)(1) of such Code applied. For purposes of the preceding sentence, the term ‘actual distribution’ includes a distribution in liquidation, and the earnings and profits of any corporation receiving a distribution not included in gross income by reason of the preceding sentence shall be increased by the amount of such distribution.

“(B) EXCEPTION FOR DISTRIBUTION OF AMOUNTS PREVIOUSLY DISQUALIFIED.—Subparagraph (A) shall not apply to the distribution of any accumulated DISC income of a DISC or former DISC to which section 995(b)(2) of such Code applied by reason of any revocation or disqualification (other than a revocation which under regulations prescribed by the Secretary results solely from the provisions of this title [title VIII, §§801-805, of Pub. L. 98-369, see Effective Date of 1984 Amendment note set out under section 245 of this title].

“(C) TREATMENT OF DISTRIBUTION OF ACCUMULATED DISC INCOME RECEIVED BY COOPERATIVES.—In the case of any actual distribution received by an organization described in section 1381 of such Code and excluded from the gross income of such corporation by reason of subparagraph (A)—

“(i) such amount shall not be included in the gross income of any member of such organization when distributed in the form of a patronage dividend or otherwise, and

“(ii) no deduction shall be allowed to such organization by reason of any such distribution.

“(3) INSTALLMENT TREATMENT OF CERTAIN DEEMED DISTRIBUTIONS OF SHAREHOLDERS.—

“(A) IN GENERAL.—Notwithstanding section 995(b) of such Code, if a shareholder of a DISC elects the application of this paragraph, any qualified distribution shall be treated, for purposes of such Code, as received by such shareholder in 10 equal installments on the last day of each of the 10 taxable years of such shareholder which begins after the first taxable year of such shareholder beginning in 1984. The preceding sentence shall apply without regard to whether the DISC exists after December 31, 1984.

“(B) QUALIFIED DISTRIBUTION.—The term ‘qualified distribution’ means any distribution which a shareholder is deemed to have received by reason of section 995(b) of such Code with respect to income derived by the DISC in the first taxable year of the DISC beginning—

“(i) in 1984, and

“(ii) after the date in 1984 on which the taxable year of such shareholder begins.

“(C) SHORTER PERIOD FOR INSTALLMENTS.—The Secretary of the Treasury or his delegate may by regulations provide for the election by any shareholder to be treated as receiving a qualified distribution over such shorter period as the taxpayer may elect.

“(D) ELECTIONS.—Any election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.

“(4) TREATMENT OF TRANSFERS FROM DISC TO FSC.—Except to the extent provided in regulations, section 367 of such Code shall not apply to transfers made before January 1, 1986 (or, if later, the date 1 year after the date on which the corporation ceases to be a DISC), to a FSC of qualified export assets (as defined in section 993(b) of such Code) held on August 4, 1983, by a DISC in a transaction described in section 351 or 368(a)(1) of such Code.

“(5) DEEMED TERMINATION OF A DISC.—Under regulations prescribed by the Secretary, if any controlled group of corporations of which a DISC is a member establishes a FSC, then any DISC which is a member of such group shall be treated as having terminated its DISC status.

“(6) DEFINITIONS.—For purposes of this subsection, the terms ‘DISC’ and ‘former DISC’ have the respective meanings given to such terms by section 992 of such Code.”

SPECIAL RULE FOR EXPORT TRADE CORPORATIONS

Pub. L. 98-369, div. A, title VIII, §805(c), July 18, 1984, 98 Stat. 1002, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—If, before January 1, 1985, any export trade corporation—

“(A) makes an election under [former] section 927(f)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] to be treated as a FSC, or

“(B) elects not to be treated as an export trade corporation with respect to taxable years beginning after December 31, 1984,

rules similar to the rules of paragraphs (2) and (4) of subsection (b) [section 805(b)(2) and (4) of Pub. L. 98-369, set out as a note above] shall apply to such export trade corporation.

“(2) TREATMENT OF TRANSFERS TO FSC.—In the case of any export trade corporation which—

“(A) makes an election described in paragraph (1), and

“(B) transfers before January 1, 1986, any portion of its property to a FSC in a transaction described in section 351 or 368(a)(1),

then, subject to such rules as the Secretary of the Treasury or his delegate may prescribe based on principles similar to the principles of section 505(a) and (b) of the Revenue Act of 1971 [Pub. L. 92-178, set out as a note under section 970 of this title], no income, gain, or loss shall be recognized on such transfer or on the distribution of any stock of the FSC received (or treated as received) in connection with such transfer.

“(3) EXPORT TRADE CORPORATION.—For purposes of this subsection, the term ‘export trade corporation’ has

the meaning given such term by section 971 of the Internal Revenue Code of 1986.”

SUBMISSION OF ANNUAL REPORTS TO CONGRESS

Pub. L. 92-178, title V, §506, Dec. 10, 1971, 85 Stat. 553, which directed, that commencing with calendar year 1972, the Secretary of the Treasury submit annual reports to Congress on the effect and operation of title V, §§501-507, of Pub. L. 92-178, was probably intended by Congress to be repealed by Pub. L. 98-369, div. A, title VIII, §804(b)(1), July 18, 1984, 98 Stat. 1000, which directed that section 806 of Pub. L. 98-178 relating to submission of annual reports to Congress be repealed. Section 804(b)(2) of Pub. L. 98-369 provided that the repeal is applicable to reports for calendar years after 1984.

§ 992. Requirements of a domestic international sales corporation

(a) Definition of “DISC” and “former DISC”

(1) DISC

For purposes of this title, the term “DISC” means, with respect to any taxable year, a corporation which is incorporated under the laws of any State and satisfies the following conditions for the taxable year:

(A) 95 percent or more of the gross receipts (as defined in section 993(f)) of such corporation consist of qualified export receipts (as defined in section 993(a)),

(B) the adjusted basis of the qualified export assets (as defined in section 993(b)) of the corporation at the close of the taxable year equals or exceeds 95 percent of the sum of the adjusted basis of all assets of the corporation at the close of the taxable year,

(C) such corporation does not have more than one class of stock and the par or stated value of its outstanding stock is at least \$2,500 on each day of the taxable year, and

(D) the corporation has made an election pursuant to subsection (b) to be treated as a DISC and such election is in effect for the taxable year.

(2) Status as DISC after having filed a return as a DISC

The Secretary shall prescribe regulations setting forth the conditions under and the extent to which a corporation which has filed a return as a DISC for a taxable year shall be treated as a DISC for such taxable year for all purposes of this title, notwithstanding the fact that the corporation has failed to satisfy the conditions of paragraph (1).

(3) “Former DISC”

For purposes of this title, the term “former DISC” means, with respect to any taxable year, a corporation which is not a DISC for such year but was a DISC in a preceding taxable year and at the beginning of the taxable year has undistributed previously taxed income or accumulated DISC income.

(b) Election

(1) Election

(A) An election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making

of an election at such other times as he may designate.

(B) Such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on the first day of the first taxable year for which such election is effective consent to such election.

(2) Effect of election

If a corporation makes an election under paragraph (1), then the provisions of this part shall apply to such corporation for the taxable year of the corporation for which made and for all succeeding taxable years and shall apply to each person who at any time is a shareholder of such corporation for all periods on or after the first day of the first taxable year of the corporation for which the election is effective.

(3) Termination of election

(A) Revocation

An election under this subsection made by any corporation may be terminated by revocation of such election for any taxable year of the corporation after the first taxable year of the corporation for which the election is effective. A termination under this paragraph shall be effective with respect to such election—

(i) for the taxable year in which made, if made at any time during the first 90 days of such taxable year, or

(ii) for the taxable year following the taxable year in which made, if made after the close of such 90 days,

and for all succeeding taxable years of the corporation. Such termination shall be made in such manner as the Secretary shall prescribe by regulations.

(B) Continued failure to be DISC

If a corporation is not a DISC for each of any 5 consecutive taxable years of the corporation for which an election under this subsection is effective, the election shall be terminated and not be in effect for any taxable year of the corporation after such 5th year.

(c) Distributions to meet qualification requirements

(1) In general

Subject to the conditions provided by paragraph (2), a corporation which for a taxable year does not satisfy a condition specified in paragraph (1)(A) (relating to gross receipts) or (1)(B) (relating to assets) of subsection (a) shall nevertheless be deemed to satisfy such condition for such year if it makes a pro rata distribution of property after the close of the taxable year to its shareholders (designated at the time of such distribution as a distribution to meet qualification requirements) with respect to their stock in an amount which is equal to—

(A) if the condition of subsection (a)(1)(A) is not satisfied, the portion of such corporation's taxable income attributable to its gross receipts which are not qualified export receipts for such year,