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

Section 506 of Pub. L. 92–178, 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,

(B) if the condition of subsection (a)(1)(B) is not satisfied, the fair market value of those assets which are not qualified export assets on the last day of such taxable year, or

(C) if neither of such conditions is satisfied, the sum of the amounts required by subparagraphs (A) and (B).

(2) Reasonable cause for failure

The conditions under paragraph (1) shall be deemed satisfied in the case of a distribution made under such paragraph—

(A) if the failure to meet the requirements of subsection (a)(1)(A) or (B), and the failure to make such distribution prior to the date on which made, are due to reasonable cause; and

(B) the corporation pays, within the 30–day period beginning with the day on which such distribution is made, to the Secretary, if such corporation makes such distribution after the 15th day of the 9th months after the close of the taxable year, an amount determined by multiplying (i) the amount equal to 4½ percent of such distribution, by (ii) the number of its taxable years which begin after the taxable year with respect to which such distribution is made and before such distribution is made. For purposes of this title, any payment made pursuant to this paragraph shall be treated as interest.

(3) Certain distributions made within 8½ months after close of taxable year deemed for reasonable cause

A distribution made on or before the 15th day of the 9th month after the close of the taxable year shall be deemed for reasonable cause for purposes of paragraph (2)(A) if—

(A) at least 70 percent of the gross receipts of such corporation for such taxable year consist of qualified export receipts, and

(B) the adjusted basis of the qualified export assets held by the corporation on the last day of each month of the taxable year equals or exceeds 70 percent of the sum of the adjusted basis of all assets held by the corporation on such day.

(d) Ineligible corporations

The following corporations shall not be eligible to be treated as a DISC—

(1) a corporation exempt from tax by reason of section 501,

(2) a personal holding company (as defined in section 542),

(3) a financial institution to which section 581 applies,

(4) an insurance company subject to the tax imposed by subchapter L,

(5) a regulated investment company (as defined in section 851(a)),

(6) a China Trade Act corporation receiving the special deduction provided in section 941(a),[1] or

(7) an S corporation.

(e) Coordination with personal holding company provisions in case of certain produced film rents

If—

(1) a corporation (hereinafter in this subsection referred to as ''subsidiary'') was established to take advantage of the provisions of this part, and

(2) a second corporation (hereinafter in this subsection referred to as ''parent'') throughout the taxable year owns directly at least 80 percent of the stock of the subsidiary,

then, for purposes of applying subsection (d)(2) and section 541 (relating to personal holding company tax) to the subsidiary for the taxable year, there shall be taken into account under section 543(a)(5) (relating to produced film rents) any interest in a film acquired by the parent and transferred to the subsidiary as if such interest were acquired by the subsidiary at the time it was acquired by the parent.

(Added Pub. L. 92–178, title V, § 501, Dec. 10, 1971, 85 Stat. 535; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–354, § 5(a)(32), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 98–369, div. A, title VIII, § 802(c)(1), July 18, 1984, 98 Stat. 999; Pub. L. 104–188, title I, § 1616(b)(11), Aug. 20, 1996, 110 Stat. 1857; Pub. L. 110–172, § 11(g)(16), Dec. 29, 2007, 121 Stat. 2491.)

REFERENCES IN TEXT

The China Trade Act, referred to in subsec. (d)(6), is act Sept. 19, 1922, ch. 346, 42 Stat. 849, as amended, which is classified generally to chapter 4 (§ 141 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 141 of Title 15 and Tables.

Section 941, referred to in subsec. (d)(6), was repealed by Pub. L. 94–455, title X, § 1053(c), Oct. 4, 1976, 90 Stat. 1648.

AMENDMENTS

2007—Subsec. (a)(1)(C) to (E). Pub. L. 110–172 inserted ''and'' at end of subpar. (C), substituted period for '', and'' at end of subpar. (D), and struck out subpar. (E) which read as follows: ''such corporation is not a member of any controlled group of which a FSC is a member.''

1996—Subsec. (d)(3). Pub. L. 104–188 struck out ''or 593'' after ''section 581''.

1984—Subsec. (a)(1)(E). Pub. L. 98–369 added subpar. (E).

1982—Subsec. (d)(7). Pub. L. 97–354 substituted ''an S corporation'' for ''an electing small business corporation (as defined in section 1371(b))''.

1976—Subsecs. (a)(2), (b)(1), (3), (c)(2)(B). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1616(c) of Pub. L. 104–188, set out as a note under section 593 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97–354, set out as an Effective Date note under section 1361 of this title.

§ 993. Definitions

(a) Qualified export receipts

(1) General rule

For purposes of this part, except as provided by regulations under paragraph (2), the qualified export receipts of a corporation are—

(A) gross receipts from the sale, exchange, or other disposition of export property,

(B) gross receipts from the lease or rental of export property, which is used by the lessee of such property outside the United States,

(C) gross receipts for services which are related and subsidiary to any qualified sale, exchange, lease, rental, or other disposition of export property by such corporation,

(D) gross receipts from the sale, exchange, or other disposition of qualified export assets (other than export property),

(E) dividends (or amounts includible in gross income under section 951) with respect to stock of a related foreign export corporation (as defined in subsection (e)),

(F) interest on any obligation which is a qualified export asset,

(G) gross receipts for engineering or architectural services for construction projects located (or proposed for location) outside the United States, and

(H) gross receipts for the performance of managerial services in furtherance of the production of other qualified export receipts of a DISC.

(2) Excluded receipts

The Secretary may under regulations designate receipts from the sale, exchange, lease, rental, or other disposition of export property, and from services, as not being receipts de-

[1] See References in Text note below.