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§ 1501. Privilege to file consolidated returns

An affiliated group of corporations shall, subject to the provisions of this chapter, have the privilege of making a consolidated return with respect to the income tax imposed by chapter 1 for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(Aug. 16, 1954, ch. 736, 68A Stat. 367.)

§ 1502. Regulations

The Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability. In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.

(Aug. 16, 1954, ch. 736, 68A Stat. 367; Pub. L. 94-455, title XIX, §1906(b) (13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 108-357, title VIII, §844(a), Oct. 22, 2004, 118 Stat. 1600.)

AMENDMENTS

2004—Pub. L. 108-357 inserted at end “In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.”

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §844(c), Oct. 22, 2004, 118 Stat. 1600, provided that: “This section [amending this section], and the amendment made by this section, shall apply to taxable years beginning before, on, or after the date of the enactment of this Act [Oct. 22, 2004].”

DUAL RESIDENT COMPANIES

Pub. L. 100-647, title VI, §6126, Nov. 10, 1988, 102 Stat. 3713, provided that:

“(a) GENERAL RULE.—In the case of a transaction which—

“(1) involves the transfer after the date of the enactment of this Act [Nov. 10, 1988] by a domestic corporation, with respect to which there is a qualified excess loss account, of its assets and liabilities to a foreign corporation in exchange for all of the stock of such foreign corporation, followed by the complete liquidation of the domestic corporation into the common parent, and

“(2) qualifies, pursuant to Revenue Ruling 87-27, as a reorganization which is described in section 368(a)(1)(F) of the 1986 Code, then, solely for purposes of applying Treasury Regulation section 1.1502-19 to such qualified excess loss account, such foreign corporation shall be treated as a domestic corporation in determining whether such foreign corporation is a member of the affiliated group of the common parent.

“(b) TREATMENT OF INCOME OF NEW FOREIGN CORPORATION.—

“(1) IN GENERAL.—In any case to which subsection (a) applies, for purposes of the 1986 Code—

“(A) the source and character of any item of income of the foreign corporation referred to in subsection (a) shall be determined as if such foreign corporation were a domestic corporation,

“(B) the net amount of any such income shall be treated as subpart F income (without regard to section 952(c) of the 1986 Code), and

“(C) the amount in the qualified excess loss account referred to in subsection (a) shall—

“(i) be reduced by the net amount of any such income, and

“(ii) be increased by the amount of any such income distributed directly or indirectly to the common parent described in subsection (a).

“(2) LIMITATION.—Paragraph (1) shall apply to any item of income only to the extent that the net amount of such income does not exceed the amount in the qualified excess loss account after being reduced under paragraph (1)(C) for prior income.

“(3) BASIS ADJUSTMENTS NOT APPLICABLE.—To the extent paragraph (1) applies to any item of income, there shall be no increase in basis under section 961(a) of such Code on account of such income (and there shall be no reduction in basis under section 961(b) of such Code on account of an exclusion attributable to the inclusion of such income).

“(4) RECOGNITION OF GAIN.—For purposes of paragraph (1), if the foreign corporation referred to in subsection (a) transfers any property acquired by such foreign corporation in the transaction referred to in subsection (a) (or transfers any other property the basis of which is determined in whole or in part by reference to the basis of property so acquired) and (but for this paragraph) there is not full recognition of gain on such transfer, the excess (if any) of—

“(A) the fair market value of the property transferred, over

“(B) its adjusted basis, shall be treated as gain from the sale or exchange of such property and shall be recognized notwithstanding any other provision of law. Proper adjustment shall be made to the basis of any such property for gain recognized under the preceding sentence.

“(c) DEFINITIONS.—For purposes of this section—

“(1) COMMON PARENT.—The term ‘common parent’ means the common parent of the affiliated group which included the domestic corporation referred to in subsection (a)(1).

“(2) QUALIFIED EXCESS LOSS ACCOUNT.—The term ‘qualified excess loss account’ means any excess loss account (within the meaning of the consolidated return regulations) to the extent such account is attributable—

“(A) to taxable years beginning before January 1, 1988, and

“(B) to periods during which the domestic corporation was subject to an income tax of a foreign country on its income on a residence basis or without regard to whether such income is from sources in or outside of such foreign country.