

“(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 section 970(b); and

“(H) any foreign income taxes which would have been deemed under 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 sec-

tion 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, exceeded

“(B) the sum of the amounts which were included in the gross income of the shareholders of such corporation under section 951(a)(1)(A)(ii) and under the provision of 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 cost 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 connection with payment for purchases of export property for use, consumption, or disposition outside the United States, or in connection with the payment for services described in subsections (b)(2) and (3).

**(d) Export promotion expenses**

For purposes of this subpart, the term “export promotion expenses” means the following expenses paid or incurred in the receipt or production of export trade income—

- (1) a reasonable allowance for salaries or other compensation for personal services actually rendered for such purpose,
- (2) rentals or other payments for the use of property actually used for such purpose,
- (3) a reasonable allowance for the exhaustion, wear and tear, or obsolescence of property actually used for such purpose, and
- (4) any other ordinary and necessary expenses of the corporation to the extent reasonably allocable to the receipt or production of export trade income.

No expense incurred within the United States shall be treated as an export promotion expense within the meaning of the preceding sentence, unless at least 90 percent of each category of expenses described in such sentence is incurred outside the United States.

**(e) Export property**

For purposes of this subpart, the term “export property” means any property or any interest in property manufactured, produced, grown, or extracted in the United States.

**(f) Unrelated person**

For purposes of this subpart, the term “unrelated person” means a person other than a related person as defined in section 954(d)(3).

(Added Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1029; amended Pub. L. 92-178, title V, §505(c), Dec. 10, 1971, 85 Stat. 553.)

## AMENDMENTS

1971—Subsec. (a)(3). Pub. L. 92-178 added par. (3).

## TREATMENT OF CERTAIN FORMER EXPORT TRADE CORPORATIONS

Pub. L. 99-514, title XVIII, §1876(m), Oct. 22, 1986, 100 Stat. 2901, provided that: “If—

“(1) a corporation which is not an export trading corporation for its most recent taxable year ending before the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984] but was an export trading corporation for any prior taxable year, and

“(2)(A) such corporation may not qualify as an export trade corporation for any taxable year beginning after December 31, 1984, by reason of section 971(a)(3) of the Internal Revenue Code of 1954 [now 1986], or (B) such corporation makes an election, before the date 6 months after the date of the enactment of this Act [Oct. 22, 1986], 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 section 805(b) of the Tax Reform Act of 1984 [set out as a note under section 991 of this title] shall apply to such corporation. For purposes of the preceding sentence, the term ‘export trade corporation’ has the meaning given such term by section 971 of such Code.”

**[§ 972. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(120), Oct. 4, 1976, 90 Stat. 1784]**

Section, Pub. L. 87-834, §12(a), Oct. 16, 1962, 76 Stat. 1031, related to the consolidation of a group of export trade corporations for treatment as a single controlled foreign corporation for tax purposes.