

TITLE 26 - INTERNAL REVENUE CODE**Subtitle A - Income Taxes****CHAPTER 1 - NORMAL TAXES AND SURTAXES****Subchapter N - Tax Based on Income From Sources Within or Without the United States****PART IV - DOMESTIC INTERNATIONAL SALES CORPORATIONS****Subpart A - Treatment of Qualifying Corporations****§ 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 41/2 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 81/2 months after close of taxable year deemed for reasonable cause

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2010 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

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.

Footnotes

¹ See References in Text note below.

(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”.

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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.