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This article will consider some of the benefits expected to enure to a corporation from electing to handle all export sales of the corporation through a Domestic International Sales Corporation (DISC). The long awaited DISC legislation has finally become law following prudent legislative compromise.[1] In explaining what the DISC law can do for reported earnings, it is deemed appropriate to note some of the significant tax and reporting aspects of the legislation.

With a DISC Subsidiary:

1. The parent shareholder should be able to offer its export products to foreign markets at prices more competitive than they could be offered without the tax incentive DISC law.

2. The parent shareholder should be able to report estimated increased earnings per share to stockholders, because the Accounting Principles Board has stated that it will not require a reserve on tax deferred income of a DISC, and will allow all such income to be reported as if it were tax free until the shareholders elect to liquidate the DISC or declare such income as a dividend.[2]

3. The parent shareholder should be able to accelerate realization of income. Since a qualified DISC is a sales company and must not be a manufacturing entity, its commissions or profits on sales may be earned when the sales transaction is completed, rather than when the products are dispatched or services rendered if its contract with the parent company so provides, and it maintains such customary accounting procedure con-

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[1]Sections 501 through 507 of the REV. ACT of 1972 (H.R. 10947) as signed by the President on December 10, 1971.

[2]The Accounting Principles Board has appeared to reconcile the SEC reporting and tax reporting aspects of DISC quite well. A reflection of its current movements is depicted in *Survey of Accounting Developments in the 60s; What's Ahead in the 70s*, Sommer, Jr., A. A. 26. BUS. LAW. No. 2 pp. 207-214 (Nov. 1970).

sistently. Many corporations hold the expenses of prepaid sales commissions in a suspense account until shipment of goods. Such acceleration of income realization would not appear to be inconsistent with the Department of Treasury's proposed Ruling § 1.991-1(f)(2) published in the May 20, 1972 *Federal Register* which would prohibit a corporate group from distorting income to the DISC by putting it on a cash basis where other entities are on an accrual method or visa versa.

4. The tax uncertainty with which a corporation is presently confronted on intercompany sales or transfers may be avoided. The application of I.R.S. Section 482 at present allows the Internal Revenue Service to disregard the form of all non-arms-length transfers of property and determine what profit should have been taken where and when to satisfy its opinion as to the place and amount of the taxable events. Upon tax redetermination by I.R.S. resulting in unanticipated additional tax, interest may also be assessed.

5. Enable the parent of a DISC subsidiary to use tax-free DISC income without payment of tax by so doing.

6. Enable the parent corporation to obtain greater liquidity through easier disposition of export paper.

7. Enable the parent corporation to avoid investment community displeasure which is apt to result if it fails to avail itself of a legal tax haven for profitable export sales.

8. Enable the parent corporation to benefit from economies to be gained through having all exported products of the parent sold through one organization of people professionally trained and experienced in foreign trade.

Legal Requirements of a DISC:

There are four basic requirements for a subsidiary to qualify as a DISC.

1. Capital Requirement—To qualify as a DISC, the domestic sales corporation must have not more than one class of stock, and the par or stated value of its outstanding stock must be at least $2,500 on each day of the taxable year.

2. Asset Requirement—The adjusted basis of the qualified export assets of the DISC at the close of the taxable year must equal or exceed 95% of the sum of the adjusted basis of all assets of the DISC at the close of the DISC taxable year.

3. Gross Receipts Requirement—Ninety-five per cent. or more of the gross receipts of the DISC must consist of qualified export receipts.

4. Election Requirement—The entity must be elected in accord with the Regulation published by the Treasury to be treated as a DISC.[3]

While I.R.C. *Section 993 (b)(4)* states that "money, bank deposits, and other similar temporary investments which are reasonably necessary to meet the working capital requirements . . . " of the DISC will be recognized as a "qualified export asset," the statute lists many other additional types of assets which will be deemed qualified export assets. Seven other types of qualified export assets listed are:

(1) Export property which must be properly manufactured, produced, grown, or extracted in the United States by a person other than a DISC, and property held primarily for sale, lease or rental, in the ordinary course of trade or business, by or to, a DISC, for direct use, consumption or disposition outside the United States, and property not more than 50 per cent. of the "fair market value" of which is attributable to articles imported into the United States.

In determining the fair market value of any article imported into the United States, its appraised value, as determined by the Secretary or his delegate under Section 402 or 402a of the Tariff Act of 1930 (19 U.S.C., § 1401a or 1402) in connection with its importation must be used.

(2) Assets used primarily in connection with the sale, lease, rental, storage, handling, transportation, packaging, assembly, or servicing of export property, or the performance of engineering or architectural services or the performance of managerial services in furtherance of the production of qualified export receipts.
(3) Accounts receivable and evidences of indebtedness which arise by reason of export transactions.[4]
(4) Obligations arising in connection with a producer's loan to the parent corporation.
(5) Stock or securities of a related foreign export corporation.
(6) Obligations issued, guaranteed, or insured, in whole or in part, by the Export-Import Bank of the United States or the Foreign Credit Insurance Association, in those cases in which such obligations are acquired from such Bank or Association, or from the seller or purchaser of the goods or services with respect to which such obligations arose.
(7) Obligations issued by a domestic corporation organized solely for

[3]I.R.C. § § 992(a)(A) thru 992(a)(D)

[4]Act § 505(b) deals with the transfer to a DISC of Assets of Export Trade Corporations. The Act amends Code Sec. 971(a).

the purpose of financing sales of export property, pursuant to an agreement with the Export-Import Bank of the United States under which such corporation makes export loans guaranteed by such Bank.

(8) Amounts (other than reasonable working capital) on deposit in the United States that are utilized during the period provided for in, and otherwise in accordance with, regulations prescribed by the Secretary or his delegate to acquire other qualified export assets.

Excluded from qualification as export property are:

1. Property leased or rented by a DISC for use by any member of a controller group (as defined in subsection (a)(3)) which includes the DISC, and

2. Patents, inventions, models, designs, formulas or processes, whether or not patented, copyrights (other than films, tapes, records or similar reproductions, for commercial or home use), good will, trademarks, trade brands, franchises or other like property.[5]

It is recommended that the following types of assets be considered for contribution to a DISC:

1. Field Inventory of the Parent Company
2. Parent Company Export Customer & Dealer Export Receivables
3. Parent Company Export Dealer Floor Plan Receivables
4. Parent Company Export Dealer & Customer Notes Receivables
5. The 80:20 international finance corporation Dealer & Customer Notes Receivables, and possibly the shares of the international finance 80:20 corporation itself.

Before the shares of an international finance corporation are contributed to a DISC, the assets that do not qualify which may be owned by it should first be transferred to another 80:20 corporation created for the purpose. The 80:20 foreign sourced income ratio however will have to be maintained in both 80:20 companies if they are to continue to qualify as such.

Some preliminary considerations and observations applicable to the activating of a qualified DISC deserve comment. It is recommended that the parent corporation should sell all its products to the export market through one DISC, and not have a separate DISC for each Group or Division. In dealing with the I.R.S., more expeditious and favorable handling of special Rulings for marginal products and other matters, such as determinations of the propriety of certain deductions etc., should be had if the I.R.S. has only one DISC with which to concern itself. Moreover, in view of the restrictive covenants in most long term loan agreements, it

[5]I.R.C. § 993(c)(2)

would be easier to remove certain assets from the DISC in the event of merger, joint venture or sale of a Group or Division without thereby transferring "... all or substantially all..." of the assets of a wholly-owned subsidiary or all the shares of such subsidiary which would otherwise be prohibited under most long term loan agreements.

It seems most likely the Treasury Department will severely scrutinize allocations to a paper company. This attitude is understandable in view of the legislative objective to promote export sales. It may be anticipated therefore, that a type of Regulation may be adopted which would require supervision of the qualified export assets by a flesh and blood organization. For example, it would be reasonable if the Regulations should provide that a DISC shall not be made subject to the application of I.R.C. Sec. 482 and Reg. Sec. 1.482-2 when the DISC, in order to penetrate or maintain sales within a foreign export market, resorts to marginal pricing with respect to such sales transactions, provided the DISC shall have incurred as a factor of its cost of sales, export promotion expenses allowable under Section 994, and that it shall be presumed that such expenses were in fact incurred if the DISC employs and maintains, from the time of its qualification as a DISC until such sales shall have been made, its own full time staff of personnel qualified by training or experience in foreign trade and export related activities, and incurs such expenses directly rather than through allocation.

The foregoing should not preclude personnel of product supplying divisions of a multi-divisional corporation with district profit centers from obtaining credit for incentive compensation purposes, etc., much as any other profit realization organization does, such as those earned on financing of domestic product sales.

To obtain maximum tax advantage of use of the DISC, corporate capital charges on inventory, receivables etc., ought to remain with the producing division so that they may be deducted in full against domestic nontax sheltered income and not expensed in the DISC.[6] Likewise, producing divisions should supply export property and products to the DISC at lowest cost (probably direct cost) in conformity with the DISC law.[7]

The DISC law is rather specific in defining "qualified export receipts."

[6]Under the DISC legislation it is conceived more than one parent corporation may have an ownership interest in a DISC, obtaining through constructive receipt income much as a partner of a partnership for tax purposes, such that the partners experience the tax effect, and not the DISC. The ramifications of minority ownership despite tax objectives should not be overlooked nonetheless. *See:* Note, *The Fiduciary Duty of Parent to Subsidiary Corporation,* 57 V. L.R. 7 (Oct. 1971) pp. 1223-1241.

[7]The writer expresses his appreciation to Constantine Iskalis, Controller, Overseas Sales and Services Operation of Allis-Chalmers for suggestions relating to DISC capitalization and management.

Generally, qualified export receipts are those received from export sales of goods or services manufactured, produced, grown or extracted in the United States and sold by the DISC, either on a purchase and resale basis or as a commission agent. When a DISC holds title to export property prior to sale, the entire gross receipt from the sale would be gross receipts of the DISC. Also, when the DISC acts as a commission agent, never holding title to export property, the question would arise as to whether the entire proceeds from the sale of the export property would be included in the gross receipts of the DISC or whether only the commission received by the DISC would be included. Under the legislation it appears the entire gross receipts arising from the sale of export property and not just the commission would be treated as a gross receipt of the DISC. It appears that the law intends to equate the treatment of the DISC, which is a commission agent, with a DISC which sells for its own account.

Leasing or rental of United States export property may produce gross receipts which qualify, if the lessee of such property uses it outside the United States. Because the sale, leasing and rental of export property gives rise to qualified gross receipts, it is necessary to consider in some detail what is meant by export property. The first requirement is the destination. Whether or not a transaction results in United States source income will be determined by a destination test, not a passage of title test as used in Section 861-4 of the Internal Revenue Code. The place of the Use, consumption or distribution of goods will determine whether the activity is export in nature. If the export property is ultimately sold in the United States, the income to the DISC will be disqualified. The disqualification will result, whether or not the re-importation took place through the auspices of the DISC, even if the importation was unintended by the DISC. This requirement might prove to be a problem for DISCs, which do not directly or indirectly control the ultimate distribution of the export property abroad, since territorial restraints must be avoided under antitrust laws.[8]

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, are also qualified. "Ancillary" and "subsidiary" are not defined in the DISC proposal; but the Treasury, it is believed, intends that the phrase shall be interpreted broadly to include installation, repair, training facility, design and consultation, whether or not performed in the

[8]For a prime example consider the E.E.C. decision of *Bosch and Van Rijn vs. De Geus* decided April 6, 1962 and discussed at 503 *et seq.*, F. W. Swacker, *Foreign Business Operations under U.S. and Common Market Antitrust Laws*, XIX BUS. LAW. NO. 2, Jan, 1964. *See also:* C. H. FULDA AND W. F. SCHWARTZ, INTERNATIONAL TRADE AND INVESTMENT, Foundation Press, 1970 pp. 796 *c.f.*, D. B. Furnish, *A Transitional Approach to Restrictive Business Practices*, 4 INT'L. LAW. 2 (Jan. 1970), pp. 317–71.

United States. Thus, in the case of engineering products, where the products are sold customarily with a license of "know-how," if the transaction be so structured that the payment for the "know-how, etc." is made under a license agreement, rather than as a part of the contract of sale of the product, such income would not qualify as an export receipt. License income is income from intangibles which as hereinafter noted are expressly excluded by the law from qualifying. However, if the sales contract provides that such services be ancillary or subsidiary to the sale of the products, the service fees received from such sales will qualify. Qualified exports also include gross receipts from the sale, exchange or other disposition of qualified export assets (other than export property).

Dividends (or amounts includable in gross income under Section 951 of the I.R.C.) with respect to stock of a related foreign export corporation, also qualify as export receipts.

In addition, qualified export receipts include interest on any obligation which is a qualified export asset. Thus, interest on credit extended to export customers in accordance with normal commercial practice; interest on obligations issued, guaranteed or insured by the Export-Import Bank and certain similar paper; interest and dividends from foreign sales subsidiaries engaged in marketing United States exports, including foreign packaging and limited assembly operations; interest and dividends from limited investments and unrelated foreign corporations made in furtherance of export sales such as loans to a foreign distributor; interest on investments and export related assets, including loans to United States manufacturers, whether or not related to the DISC, to finance investments related to export production, all are qualified export receipts. The law also expressly states that gross receipts for engineering or architectural services for construction projects located or proposed for location outside the United States shall be qualified export receipts, and the gross receipts for the performance of managerial services in furtherance of the production or other qualified export receipts of a DISC will be qualified export receipts.

The law further defines export property as any personal property manufactured, produced, extrated or grown in the United States or other possession for ultimate use, consumption or disposition outside of the U.S. It is possible if the DISC retained title to the property for its own account from time of its export until the final unit is completed with the addition by a foreign subsidiary of locally manufactured items abroad, and was then sold as a finished product, that the entire receipt would be a qualifying export receipt. Sales to foreign purchasers or to an unrelated DISC for export would, however, be deemed export income.

Excluded from being qualified export receipts are the following:

(1) The sale of export property to the United States government or any agent or instrumentality thereof and service or other income ancillary thereto;
(2) Income from the use of intangibles abroad, such as copyrights, trademarks and patents;
(3) Foreign franchising operations except where a United States taxpayer supplies a foreign franchise with a particular product line; the sale of those items through a DISC could generate qualified export income; and
(4) Income in connection with the sale or lease of export property, which results from a DISC selling export property abroad for final disposition, use or consumption of such property in the United States.

The adjusted basis of the qualified export assets of the DISC at the close of its taxable year must equal or exceed ninety-five per cent of the sum of the adjusted basis of all assets of the DISC at the close of the taxable year: The law does, however, provide for situations under which a DISC may distribute its non-qualified receipts or assets after the end of the taxable year, in order to satisfy the ninety-five per cent gross receipts and the ninety-five per cent assets test for the year. The purpose of this is to prevent a corporation from failing to qualify for DISC treatment in a year, merely because of its failure to meet the gross receipts or assets test. The amount which a corporation must distribute under the distribution rule is the sum of the portion of its taxable income attributed to its non-qualified gross receipts (if it fails to satisfy the gross receipts tests), plus the fair market value of the non-qualified export assets held by it on the last day of the taxable year (if it fails to satisfy the assets tests for the year). In either case, the entire non-qualified amount must be distributed and not merely the average.

The Internal Revenue Service makes the effective date of the tax deferral January 1, 1972 under the I.R.S. ruling, which sets forth procedures which have been established under which a corporation can elect to be treated as a DISC for its first taxable year beginning after December 31, 1971 and before December 31, 1972. The election is made by filing a statement of election with the Service Center with which the corporation files its income tax returns. The statement is to be signed by any person described in Section 6062 of the Code and captioned "Election to be Treated as a DISC." It shall contain the following information:

(1) the name, address and employer identification number of the corporation;

(2) the beginning date of the first taxable year for which the election is effective;
(3) the number of shares of stock of the corporation issued and outstanding as of the time the statement of election is filed; and
(4) the date and place of incorporation.

In the case of corporations being used which existed prior to December 31, 1971, such formal election must be filed on or before March 31, 1972. Section 992 (b)(1)(B) provides that an election by a corporation to be treated as a DISC, 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. The Regulation requires that the consent of the parent corporation to the election date by the DISC be contained in a statement setting forth the name and address of the corporation and of the shareholder and the number of shares of stock owned, as of the beginning of the taxable year of the corporation for which such corporation elects to be treated as a DISC. The consent is to be attached to the election statement filed.

Additional Tax Aspects of DISC Law

The legislative purpose in creating the DISC legislation as an incentive to exports, is to offset present inequities in the tax treatment of sales by American corporations, of products produced in the United States for sale abroad. Another primary objective is to impede the exodus of American capital which corporations, motivated by the desire to compete in foreign markets, invest in manufacturing facilities abroad. The consequence obviously has been substantial loss of employment and opportunity for jobs in the United States, and injury to the U.S. balance of payments position.[9]

In view of the advantages of supplying a market abroad through an overseas subsidiary manufacturing the goods, such as lower priced foreign labor (though not always more productive), lower shipping costs, avoidance of tariffs when the factory is located within a geographical area which is a part of a Regional Trade Area, such as the E.E.C., and application of a value added rather than a graduated corporate income tax, legislation favoring the U.S. exporter became mandatory. The administration has at last recognized that if America is to maintain or increase its exports into world markets, drastic reform of the tax law was required.

Prior to passage of DISC legislation the United States granted tax

[9]A striking comparison may be noted with regard to other countries, *e.g.*, D. A. Grants, *Uniform Tax Incentives Legislation in Central America*, 4 INT'L. LAW. 3, (April 1970) pp. 467-76.

deferral treatment of income earned from direct U.S. investment in manufacturing facilities abroad, but not to export production. Even sales income earned abroad by a foreign subsidiary of an American corporation, whether or not such subsidiary declared a dividend, was subject to a tax theory of constructive receipt under what the Revenue Act refers to as Subpart F, Income. The United States taxes its citizens, including its domestic corporations, on their worldwide income. Where they have income from foreign sources, and the foreign sources and the foreign government impose a tax on that income, the United States allows a credit against the U.S. tax for the foreign taxes paid to avoid double taxation on the same income. In the case of foreign manufacturing subsidiaries of U.S. corporations, as a general rule, U.S. tax is deferred or postponed until the earnings are distributed as dividends. If the foreign *effective* tax is lower than the U.S. tax, whether by reason of a lower rate or a tax holiday or an investment incentive in the foreign tax law, the foreign subsidiary of the U.S. company enjoys the full benefit of the lower rate so long as the earnings are retained abroad in that subsidiary.

In contrast, prior to the enactment of the DISC law, U.S. companies were generally taxed currently at the full tax rate on their export earnings, even though such earnings were also foreign source income and even though in making export sales they were performing essentially the same function as a foreign subsidiary of a U.S. company selling goods manufactured abroad.

The Internal Revenue Service has relied successfully for years on I.R.C. Section 482 for purposes of disregarding the form of a transaction, and deciding that profits which were thought to have been earned abroad, because of the way the transaction was structured, were, in fact, earned in the United States. When the I.R.S. has exercised its prerogative of rewriting the contract for tax purposes, the corporation is frequently faced with a new additional tax bill, plus interest.

Other countries have the tax-value-added system of taxation, and are permitted under the General Agreement on Tariffs and Trade (GATT) to provide rebates to corporations on their export sales without violating the GATT. The United States, however, has concluded that rebates in view of our systems of indirect taxation would be such a violation of GATT as would not be tolerable. Another approach could have been the repeal of Section 482 of the I.R.S., but that would have opened the door across-the-board, not only for exports, but for other transactions, depriving the United States of its tax bite without the incremental improvement in export sales assured. Clearly the DISC law is regarded as a preferable accommodation to the GATT rules. It is interesting to observe however,

that new and vigorous political overtures for adoption of a T.V.A. by the United States are being heard now after DISC is law.[10]

The net tax effect of the DISC law is to make the lax treatment of a domestic company the same as for a foreign sales subsidiary, by not imposing United States tax on its current or retained earnings, until either there has been a dividend to the parent or liquidation or sale of the DISC shares. At such time as those events may occur, the retained export earnings will be taxed to the shareholder as ordinary income to the extent distributed. However, to permit the DISC proposal to achieve its full incentive effect, its profits may be loaned back to the U.S. parent or any U.S. producer to support investment in export related assets, including plant and equipment, inventories and research and development expenditures. The loans must be interest bearing and are limited to the same proportion of investment in the classes of assets described herein as the export sales compared to the total sales. Such a loan is not treated as a dividend.

In general, the DISC is permitted to make available to the parent corporation, its accumulated tax free income as a loan, provided that such sum, when added to the unpaid balance of all other producer's loans previously made by the DISC to its parent, will not exceed the accumulated DISC income at the beginning of the month in which the loan is made. The loan obligation should be evidenced by a note or other evidence of indebtedness, with a stated maturity date of not more than five years from the date of the loan. The loan should be designated as a "producer's loan." The loan may bear interest at four per cent per annum; and since such interest does not qualify as an export receipt, the interest received by the DISC will be subject to tax. An obligation is treated as arising out of a producer's loan only to the extent that such loan, when added to the unpaid balance of all other producer's loans to the borrower outstanding at the time such loan is made, does not exceed an amount determined by multiplying the sum of:

1. the amount of the borrower's adjusted basis determined at the beginning of the borrower's taxable year in which the loan is made in plant machinery and equipment and supporting production facilities in the United States;
2. the amount of the borrower's property held primarily for sale, lease or rental to customers in the ordinary course of trade or business at the beginning of such taxable year; and

[10] A brief review of policy considerations will be found in LEGISLATIVE SURVEY, 91st Cong. 2nd Sess., Ehrenhaft, P.D., 3 *Law and Policy In International Business* No. 3 (1971), pp. 638-40.

3. the aggregate amount of the borrower's research and development expenses in the United States during all proceding taxable years, beginning after December 31, 1971, by the percentage which the borrower's receipts during the three taxable years immediately preceding the taxable (but not including taxable years commencing prior to 1972) year in which the loan is made, from the lease, sale or rental outside the United States, of property which would export property if held by the DISC is of the gross receipts during such three taxable years from the sale, lease or rental of property held by such borrower primarily for sale, lease or rental to customers in the ordinary course of the trade or business of the borrower.

The special intercompany pricing rule provides that a DISC earns a profit, and thus achieves deferral of U.S. tax to the extent of four per cent of its sales or half of the combined taxable income from the United States manufacturing and the export sales, whichever was higher. In addition, the DISC in either case could earn an additional profit equal to ten per cent of its export promotional expenses which are basically its costs of operations as an export sales subsidiary.

The DISC legislation should motivate American corporations to elect to supply its overseas customers, when at all possible, with goods, the content of which is more than fifty per cent manufactured in the United States, so that it may experience, through the use of DISC tax-free income from the sale of such goods, and be able to use in its business, the funds derived from such profits, free of immediate U.S. income tax, taking comfort that all threats of additional tax assessments based on "second guessing" by the I.R.S. under Section 482, Intercompany Pricing Adjustments, will no longer exist.

While for I.R.S. purposes, the draft legislation did not permit consolidated reporting of DISC income, the effective tax rate will currently be thirty-six per cent or less; and other income of a DISC connected with exports will be currently taxable at a twenty-four per cent effective rate or less. Since it's the shareholder who is taxed constructively by the law, and is deemed to earn the taxable income of the DISC, tax consolidation is an academic point.

The law does not require that at the end of ten years, when the DISC legislation will be up for extension, the parent take the income accrued out of the DISC and pay taxes. The Accounting Principles Board therefore has ruled that there is no need that the indefinitely tax-deferred income be subject to a reserve for future taxation.

When and if DISC tax-deferred income becomes taxable by design of the shareholder, the law allows such income to be spread over a period equal to the life of the DISC or ten years, whichever is shorter.

What if a corporation has a tax loss-carry-forward and can't be sure it will use it up in 1972. The answer is that if profits and tax liability are inadequate to use up the loss-carry-forward and tax credits; and the corporation is determined no longer to retain such tax credits, even as a deduction, a dividend may be declared by the DISC of its tax-free earnings prior to the close of its tax year; therefore, tax credits and loss-carry-forward are not sacrificed. If the total taxable income from domestic sales and from export sales should prove to be more than adequate to offset loss-carry-forward and aging tax credits and DISC is not used, those sales which were not put through DISC would be fully taxable. Apart from tax considerations, presumably, export sales should be increased if the pricing of products laid down abroad can be more competitive; and increased production reduces unit cost for both domestic and export sales.

The legislation dictates that the rules for commissions, rentals and marketing costs shall be prepared by the Secretary or his delegate, and that such regulations shall set forth the rules which are consistent with the statute for application in those cases in which a DISC is seeking to establish or maintain a market for export property. The term "export promotion expenses" is defined as being those expenses incurred to advance the distribution or sale of export property for use, consumption or distribution outside the United States, but does not include income taxes. Such expenses, however, may include freight expenses to the extent of fifty per cent of the cost of shipping export property by vessel or by air. The Treasury Department has not at the time of this writing issued definite rules for implementing so-called marginal transactions where DISC exporters may seek to establish or maintain a market for their export property. If and when such regulations are issued or private rulings are obtained by DISCs it will be helpful to see what specific kinds of costs for manufacturing will be allowed to be absorbed by the parent corporations.

The new DISC law has many facets which will remain illusive until all the Regulations implementing the law are published. Only some of the highlights of the law have been examined herein. Many other and more subtle ramifications of the DISC law, such as DISC capital gains and losses, foreign tax credit limitations, per-county reporting under I.R.S. Sections 901–904 and minimum distributions by domestic corporations under I.R.S. Section 963 deserve detailed comment, but those subjects extend beyond the reaches of this paper.[11]

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[11]The I.R.S. has just released a splendid publication with questions and answers together with the Official Text of the DISC Sections of the Revenue Act of 1971 entitled *DISC–A Handbook for Exporters* U.S. Government Printing Offices, January, 1972, (price forty cents).