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Arnold E. Rubinoff

Kevin Conboy

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United States Income Taxation of Technology Export Transactions

by Arnold E. Rubinoff*  
and Kevin Conboy**

I. Introduction

This article attempts to explain in general terms how the United States income tax system applies to the convergence of two significant twentieth-century trends: the increasing internationalization of the economy of this planet and the rapid growth of high-technology industry. Our goal is to point the U.S. attorney in the right direction when he or she must solve problems for U.S. technology-exporting clients which require the application of the Internal Revenue Code (Code) to income generated from technology export transactions. Such problems are likely to arise with increasing frequency for attorneys throughout the United States during the remainder of this century and beyond.

For the purposes of this article, it is assumed that a U.S. individual or legal entity is the owner and holder of industrial technology, and that the owner of the technology wishes to export the technology in some fashion for gain. While the primary focus of this tax discussion will be the Code and its subsidiary sources of U.S. federal income tax law, foreign country taxation and United States-foreign country tax treaties will be addressed to the extent that they affect U.S. income taxation of technology export transactions. Special attention will be given to the taxation of licensing income.

In general, this article presents the ordinary application of U.S. income tax principles to income generated from the export of technology by U.S. taxpayers. The different ways technology can be characterized for tax purposes and various transfer methods will be explained. Transactions eligible for capital gains treatment will be discussed. Certain tax pitfalls, such as those found in Sections 482, 1239, 1245 and 1249, will be discussed, along with suggestions for avoiding them when possible. The

* Partner, Powell, Goldstein, Frazer & Murphy, Atlanta, Georgia; B.A. 1972, University of Vermont; J.D. 1975, Emory University.
** Associate, Powell, Goldstein, Frazer & Murphy, Atlanta, Georgia; B.A. 1974, LeMoyne College; J.D. 1979, University of Georgia.
foreign tax credit and the application of tax treaties also will be explained.

As this article is confined in scope to U.S. income tax, it does not address other topics which are crucial to the technology exporter and his attorney, such as the considerable effect of the extraterritorial application of U.S. antitrust law on technology export transactions.¹ Nor does it discuss direct U.S. controls over exports for foreign policy and national security reasons, pursuant to the Arms Export Control Act of 1976, the Atomic Energy Act of 1954, and the Export Administration Act.² The major forms of industrial property, i.e., patents, know-how, trade secrets, copyrights and trademarks, and their registration and protection under U.S. law, are discussed in greater detail elsewhere in this issue.³ The protection afforded industrial property under multilateral treaties and conventions also is discussed elsewhere in this issue.⁴

Another aspect of U.S. technology export transactions that the U.S. attorney will want to examine, but which is outside the scope of this article, is the variety of financial incentives the U.S. government has for the sale or other transfer of goods and services abroad, including financing and guarantees through the Export-Import Bank, the Overseas Private Investment Corporation, the Agency for International Development, the Commodity Credit Corporation, the Foreign Military Sales Credit Program and the Economic Support Fund.⁵

Other significant considerations outside the scope of this article include: (1) the various techniques available when negotiating a license or other technology export agreement; (2) the fairly recent phenomenon of direct controls imposed on technology transfer by a number of Third World technology-importing countries, such as Mexico and Venezuela;⁶

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and (3) multilateral controls on technology transfer, including those imposed by both technology-importing countries such as the Andean Pact countries of Latin America, and by technology transferor countries, of which COCOM is an example. In addition, there are other proposed codes of conduct which would affect technology transfer presently under negotiation in the United Nations and elsewhere. These too are outside the scope of this article.

II. How Income from Technology Export Transactions is Ordinarily Taxed

A. Characterization of Technology for Tax Purposes

There are three significant variables in determining the tax on any technology export transaction: (1) the status of the taxpayer, i.e., whether the taxpayer is an individual, a corporation, a partnership or some other entity; (2) the type of technology transferred; and (3) the transfer mechanism. Sometimes the taxpayer's status vis-a-vis the technology transferee will affect U.S. income taxation of the taxpayer. Different tax rules sometimes come into play when the transferor and transferee are related.

It is frequently a goal of U.S. technology transferors to reduce U.S. income taxation of gain on any transfer by having the transaction taxed at the long-term capital gains rate rather than at the ordinary income tax rate. Capital assets under Section 1221 of the Code and property

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8 COCOM is the North Atlantic Treaty Organization's export coordinating committee. COCOM publishes a list of goods which no NATO member can export to communist bloc countries without special permission from COCOM. Since participation in COCOM is voluntary, the committee has had problems maintaining its cohesion. See generally Note, supra note 3, at 582-83.

9 Specifically, the United Nations Conference on Trade and Development (UNCTAD) is developing an international code of conduct for the transfer of technology. See generally Fairley & Rowcliffe, UNCTAD Code of Conduct for the International Transfer of Technology: Problems and Prospects, 1980 CAN. Y.B. INT'L L. 218 (1980).

10 The maximum tax rate for individual taxpayers is 50%. I.R.C. § 1 (Supp. V 1981). For corporations, the maximum rate is 46%. Id. § 11 (Supp. V 1981). Partnerships are not subject to income tax, but partners are taxed on their share of the partnership income at their individual rates. I.R.C. § 701 (1976).

11 A "capital gain" occurs when a capital asset is sold or exchanged for a profit. "Capital assets" are defined in I.R.C. § 1221 (1976 & Supp. V 1981). Pursuant to I.R.C. §§ 1222(1), (3) (Supp. V 1981), a "short term" capital gain occurs when the capital asset sold or exchanged has been held by the taxpayer for one year or less. Correspondingly, "long term" capital gains occur when the asset sold or exchanged has been held by the taxpayer for more than one year. The maximum tax rate on corporate capital gains is 28%. I.R.C. § 1201(a) (Supp. V 1981). The tax rate for an individual's capital gains is the same as for ordinary income, but 60% of each year's net capital gains are subtracted from the year's gross income. Hence, only 40% of capital gains are subject to taxation, and the maximum effective tax rate for an individual's capital gains is 20%. I.R.C. § 1202(a) (Supp. V 1981).
used in a trade or business under Section 1231(b) may both qualify for long-term capital gains treatment under the following circumstances.

1. Is the Technology a Section 1221 Capital Asset?

Section 1221 defines a capital asset as property held by the taxpayer, whether or not connected with the taxpayer’s trade or business, but excluding inventory and other property held for sale to customers in the ordinary course of business, property used in a trade or business depreciable under Section 167 or 168, accounts and notes receivable acquired in the ordinary course of business, and certain artistic forms of intellectual property when held by the creator. If a capital asset is sold or exchanged for gain after being held by the taxpayer for more than one year, the gain is long-term capital gain, taxable at favorable rates.

2. Is the Technology Property Used in a Trade or Business?

Section 1231 property is (1) property used in the taxpayer’s trade or business which is depreciable under Section 167 or 168 and which is held for more than one year, and (2) real property used in the taxpayer’s trade or business which is held for more than one year. The foregoing can be neither inventory nor other property held by the taxpayer for sale to customers in the ordinary course of the taxpayer’s trade or business, nor certain artistic forms of intellectual property when held by the creator. Section 1231 property is eligible for long-term capital gains treatment if total gains from the sale or exchange of such property exceed total losses from the sale or exchange of such property in any given taxable year.

Patents, trademarks and copyrights are generally categorized as either capital assets or as Section 1231 property, depending on whether the property has an ascertainable life for purposes of depreciation under Section 167 or whether the property is being used in a trade or business. Issued patents and copyrights have ascertainable lives; trademarks and patent applications do not. Industrial know-how and trade secrets are generally regarded as capital assets, since these forms of industrial property lose their value when they become common knowledge, and hence they have no ascertainable life. When know-how is transferred in tandem with the sale or exchange of patent rights, it is generally treated as part of a single sale or exchange of capital assets. The holding period

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for industrial property usually begins to run when the property is first reduced to practical application.\textsuperscript{21}

The difficulty in achieving long-term capital gains treatment for the licensing of industrial technology is usually \textit{not} in establishing that the technology is a capital asset or Section 1231 property, but rather that there has been a "sale or exchange." Sound tax planning is often required to enable the taxpayer to achieve long-term capital gains treatment through a sale or exchange of the technology, while ensuring that the technology is properly worked by the transferee, and thus that any percentage of production payments to the taxpayer/transferor is maximized.

3. \textit{Other Characterizations of Industrial Property}

If the technology transferred is not a capital asset or Section 1231 property used in a trade or a business, or if there is no "sale or exchange," the gain from the transfer will be ordinary income.

4. \textit{Technical Services}

Income derived from providing personal services of a technical nature, such as training, is normally ordinary income.\textsuperscript{22} However, in a single technology transfer transaction, where "services are performed subsidiary and ancillary to the transfer of patent rights and proprietary know-how, they take on the nature of the patent rights and know-how as 'property.'"\textsuperscript{23} Thus, a modest amount of service income, particularly when it relates to the "starting-up" of production using the technology, may ride "piggy-back" on the sale or exchange of a capital or Section 1231 asset. However, the transferor should avoid providing ongoing services which might be characterized as continuing technical assistance after start-up.\textsuperscript{24} If the transferor anticipates a significant amount of service income, he may find it prudent to make arrangements for the provision of services, perhaps through a service subsidiary, outside the scope of the industrial property transfer agreement. This will avoid jeopardizing capital gains treatment for the asset and a possibly heavy-handed Internal Revenue Service (IRS) reallocation of services to sales income from the transaction.\textsuperscript{25}

B. \textit{Sale or Exchange}

Whether there has been a "sale or exchange" of a capital asset or

\textsuperscript{21} See, e.g., Kronner v. United States, 110 F. Supp. 730 (Ct. Cl. 1953) (patent).


\textsuperscript{23} Glen O'Brien, 70 T.C. at 502. See also United States Mineral Prods. v. Comm'r, 52 T.C. 177, 199 (1969); Rev. Rul. 64-56, 1964-1 C.B. 133 (holding services performed subsidiary to a transfer of patent rights "property" for purposes of § 351 tax-free exchanges).

\textsuperscript{24} See, e.g., Hooker Chems. & Plastics Corp. v. United States, 591 F.2d 652, 665 (Ct. Cl. 1979).

\textsuperscript{25} See infra notes 104-106 and accompanying text.
Section 1231 property or the transfer of a patent by its holder under Section 1235 depends, to some extent, on the nature of the technology transferred. There is no "sale or exchange" test spelled out in Section 1221, 1222 or 1231. However, by relying on related or analogous provisions, courts often frame the "sale or exchange" test as whether the transferor has divested himself of "all substantial rights" in the technology, or whether, on the other hand, he has retained "any substantial right" in the technology transferred. Whatever language is used, courts often look at all the surrounding circumstances to determine when there has been a "sale or exchange." At a minimum, the transferor should grant the transferee the right to make, use and sell products using the technology for the remainder of the useful life, or until its legal protection expires, for there to be a possibility of capital gains treatment. A discussion of the rules for determining whether there has been a sale or exchange for each form of technology follows, with emphasis on the treatment of patents.

Generally, the outright assignment of a patent, or the grant of an exclusive license to make, use, and sell under a patent, will qualify as a Section 1232 sale or exchange of Section 1231 property, or a Section 1235 transfer. The United States Supreme Court has stated, with regard to whether a patent has been assigned or merely licensed:

The monopoly thus granted is one entire thing, and cannot be divided into parts, except as authorized by those laws. The patentee or his assigns may, by instrument in writing, assign, grant and convey, either the whole patent, comprising the exclusive right to make, use and vend the invention throughout the United States; or an undivided part or share of that exclusive right; or the exclusive right under the patent within and throughout a specified part of the United States . . . . A transfer of either of these three kinds of interests is an assignment, properly speaking, and vests in the assignee a title in so much of the patent itself, with a right to sue infringers***. Any assignment or transfer, short of one of these, is a mere license, giving the licensee no title in the patent, and no right to sue at law in his own name for an infringement.

I. Patent Transferred by a "Holder"

As a tax incentive to individual inventors, Section 1235(a) provides for capital gains treatment for a transfer of "all substantial rights to a patent, or an undivided interest therein which includes a part of all such

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26 I.R.C. § 1235 (1976 & Supp. V 1981) states that a transfer (other than by gift, inheritance, or devise) of all substantial rights to a patent shall be considered a sale or exchange of a capital asset held for more than one year. The section applies regardless of whether payment for the patent rights coincides with the transferee's use of the patent, and regardless of whether payment is contingent on the productivity, use, or disposition of the property.


rights” by any “holder,” whether or not the patent has actually been held for more than one year, and regardless of whether payments in consideration of the patent transfer are payable periodically over the term of the transferee’s use of the patent, or are contingent on the productivity, use, or disposition of the patent. A “holder” is any individual inventor or any other individual who acquired the patent from the inventor before it was reduced to practice, so long as the latter individual is not the employer of the inventor or related to the inventor.

The regulations under Section 1235 give an expansive gloss to the term “all substantial rights to a patent.” The regulations are important not only for their application to Section 1235 transfers, but because they are sometimes examined in ordinary capital gains cases where the transferor is not a “holder.”

The following are not “substantial” rights: (1) the retention by the transferor of legal title for the purpose of securing performance or payment by the transferee in a transaction involving the exclusive license to manufacture, use, and sell under the patent for the life of the patent; and (2) the retention by the transferor of rights in the property which are not inconsistent with the passage of ownership, such as the retention of a security interest, or a reservation in the nature of a condition subsequent (such as a provision for forfeiture on account of non-performance).

If the patent holder transfers an interest in his patent (i) which is limited geographically within the country of issuance; or (ii) which is limited in duration by the terms of the agreement to a period less than the remaining life of the patent; or (iii) which grants rights to the grantee in fields of use within certain trades or industries less than all the rights covered by the patent when other rights exist and have value at the time of the grant; or (iv) which grants to the grantee less than all the claims or inventions which exist, which are covered by the patent, and which have value at the time of the grant, then the patent holder has not transferred “all substantial rights” and is not entitled to capital gains treatment under Section 1235. In addition, the retention of the right to terminate the patent transfer at will is the retention of a substantial right defeating capital gains treatment under Section 1235. Courts have held, however, that even though the holder may not qualify for Section 1235 capital gains treatment, he can still seek capital gains treatment under other provisions of the Code.

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30 I.R.C. § 1235(a) (Supp. V 1981). A “patent” under this section means the actual invention, even if a patent has not yet been issued or even applied for. Treas. Reg. § 1.1235-2(a), 26 C.F.R. § 1.1235-2(a) (1983).
31 I.R.C. § 1235(b) (1976).
33 See, e.g., Hooker Chemicals, 591 F.2d at 659; Pickren v. United States, 378 F.2d 595, 599 (5th Cir. 1967).
36 See, e.g., Burde v. Comm’r, 43 T.C. 252, aff’d, 352 F.2d 995 (1965), cert. denied, 383 U.S.
The Tax Court has held on several occasions that the regulation regarding geographical limitations is invalid, but the circuit courts have disagreed and reversed the Tax Court. The same thing occurred with respect to the regulation regarding field of use limitations. Because a "holder" under Section 1235 who does not transfer "all substantial rights" in his patent may still seek capital gains treatment under Sections 1221 and 1222, the effect of these regulations may be somewhat limited. Still, a court which has determined that there has been no transfer under section 1235 generally will not consider whether there has been a "sale or exchange" of the patent under the somewhat divergent case law of Section 1221 or 1231.

Rights which "may or may not be substantial, depending upon the circumstances of the whole transaction," include the retention by the transferor of an absolute right to prohibit sublicensing or subassignment. The same treatment is applied to a transfer in which the transferor fails to convey to the transferee the right to use or sell the patent property.

2. Patents Not Transferred Under Section 1235

In order for there to be a "sale or exchange" of a patent under Section 1231, there must be a grant of all substantial rights in the patent. The patent is generally said to confer on its owner the right to exclude others from making, using or selling the invention during the life of the patent, which is seventeen years at present. The transfer of less than "all substantial rights" is a license, the gain from which is ordinary income. Courts look at all the circumstances in determining whether the parties intended a license or the sale or other assignment of the patent. Whether there has been a transfer of all substantial rights is essentially a

966 (1966). See also Treas. Reg. § 1.1235-1(b), 26 C.F.R. § 1.1235-1(b) (1983). But see Poole v. Comm'r, 46 T.C. 392, 404 (1966) ("If the payments for a patent are contingent upon productivity, use, or disposition, or if they are payable periodically over a period generally coterminous with the transferor's use of the patent, section 1235 is the holder's exclusive provision for qualifying for capital gains treatment."). The IRS follows Burde and the regulations, and has specifically rejected the holding in Poole. Rev. Rul. 69-482, 1969-2 C.B. 164, 165.


38 See Klein, 507 F.2d at 621 (Transferor's retention of patent rights in one or more geographical areas held a substantial right within the "ordinary everyday meaning" of the term).

39 See Mros v. Comm'r, 493 F.2d 813, 816-17 (9th Cir. 1974) (taxpayer must transfer all rights to use the patent ("monopoly rights") to get capital gains treatment; regulations upheld as not "plainly inconsistent" with the Code), rev'd 40 T.C.M. (P-H) ¶ 71,123 (1971).

40 See, e.g., Klein, 507 F.2d 617; Mros, 493 F.2d 813.


45 Bell Intercontinental, 381 F.2d at 1010.

46 Id. at 1011.
factual question. The method of payment for the transfer is inconsequential, and payment in the form of "royalties" which are contingent on sales or profits does not preclude there being a "sale" for tax purposes. It is also unimportant that the parties term their agreement a "license" rather than a "sale." The terminology used by the parties is not determinative for tax purposes.

A provision in a patent transfer agreement providing for termination in the event of a stated event usually will not defeat a "sale" for tax purposes. Such a clause is regarded as a condition subsequent. Further, the fact that a patent is sold subject to a non-exclusive license generally does not defeat capital gains treatment if the transferor sells all its rights in the patent. A clause giving the patent grantee the right to terminate at will does not always prevent a sale. Ordinarily, the sale of a patent should transfer with it the right to sue patent infringers. A clause permitting termination of the agreement based on the grantee's failure to meet certain production standards or to use his best efforts to develop the patent need not defeat a "sale." Standard contract clauses prohibiting the transfer or assignment of rights under the agreement have been found to be a reasonable mechanism to ensure royalty payments under the agreement, rather than the retention of a substantial right in the patent.

The transfer of a patent for less than its remaining life will invariably be considered a license. However, the right of a patent grantor to terminate the grant at will has been described as not a substantial right in the unusual circumstance where the right to terminate had "no practical value."

The most troublesome problems concerning whether a patent transferor has retained a "substantial right" have arisen in the context of geographical and field of use limitations. Courts have adopted a "no

47 Hooker Chemicals, 591 F.2d at 658.
49 Bell Intercontinental, 381 F.2d at 1011.
50 See Hooker Chemicals, 591 F.2d at 658.
52 Bell Intercontinental, 381 F.2d at 1011.
53 See Hooker Chemicals, 591 F.2d at 658; E.I. duPont de Nemours & Co. v. United States, 288 F.2d 904, 911-12 (Ct. Cl. 1961). Cf. Bell Intercontinental, 381 F.2d at 1015-16 (agreement held a sale even though transferee could bring infringement action in transferor's name).
54 Bell Intercontinental, 381 F.2d at 1015.
55 See Hooker Chemicals, 591 F.2d at 663; Watson v. United States, 222 F.2d 689, 691 (10th Cir. 1955); Glen O'Brien, 7 T.C. at 501.
56 See, e.g., Bell Intercontinental, 381 F.2d at 1021-22. See also Kaczmarek v. Comm'r, 51 T.C.M. (P-H) ¶ 82,986 (1982) (transfer of know-how for period shorter than useful life held a license).
57 See Hooker Chemicals, 591 F.2d at 658-59 (U.S. corporation's reservation of right to export products of transferred patents to area in which transferee had received exclusive right to use patent, held not substantial, because high transportation costs and transferor's lack of facilities in the area made such exports economically unfeasible); Bell Intercontinental, 381 F.2d at 1021.
practical value” or “no substantial value” test when evaluating clauses which limit patent grants to a certain geographical area or a certain industry, to determine whether the patent transferor seeking capital gains treatment has retained any substantial right in the patent. If the court determines that the geographical or field of use limitations have no real economic value, the limitations will not be regarded as substantial rights.\(^\text{58}\) Restrictions in this area are more problematic than in others, and geographical or field of use restrictions should be used cautiously if capital gains treatment is strongly desired.

Often, rights deemed insubstantial under regulations issued pursuant to Section 1235\(^\text{59}\) are also not substantial rights for the purpose of determining whether there has been a sale or exchange under Section 1232.\(^\text{60}\)

The discussion of restrictions above is a list. Courts decide whether there is a sale or license based on all the circumstances.\(^\text{61}\) The presence of too many “insubstantial” rights retained by the patent transferor may result in an unfavorable determination by the IRS or by a court. Careful planning of technology export transactions is required to ensure long-term capital gains treatment.

3. Copyright

Rights in a literary, musical, artistic, or similar composition embodied in a copyright, are always capital or Section 1231 assets. Copyrights endure for the life of the creator plus fifty years.\(^\text{62}\) One distinction between copyrights and patents, for the purpose of determining whether there has been a sale or exchange of the asset, is that rights in a copyright are generally divisible to a greater extent than are rights in a patent. The right to develop a copyrighted composition may generally be divided both geographically and in terms of medium, so long as the copyright assignment or exclusive license is for the life of the copyright.\(^\text{63}\)

4. Trademarks, Trade Names, Franchises

Section 1253 provides that a transfer of a franchise, trademark, or trade name shall not be treated as a sale or exchange of a capital asset if the transferor retains “any significant power, right, or continuing interest” with respect to the franchise, trademark, or trade name transferred.\(^\text{64}\) The crucial definition in this section of the Code is “significant power, right, or continuing interest.” The term includes the following

\(^{58}\) See, e.g., Hooker Chemicals, 591 F.2d at 658-59; E.I. duPont de Nemours & Co. v. United States, 432 F.2d 1052, 1055-56 (3d Cir. 1970); Carruthers, 219 F.2d at 25.


\(^{60}\) See, e.g., Hooker Chemicals, 591 F.2d at 658.

\(^{61}\) See Bell Intercontinental, 381 F.2d at 1021.


\(^{64}\) I.R.C. § 1253(a) (1976).
rights: the right to disapprove any further assignment of the asset; the right to terminate the agreement at will; the right to prescribe standards of quality for performance or production; the right to require that the transferee sell or advertise only transferor's products or services; the right to require the transferee to purchase substantially all of his supplies and equipment from the transferor; and the right to payments based on the productivity, use, or disposition of the interest transferred, if such payments constitute a "substantial element" under the agreement.\textsuperscript{65} Payments contingent on productivity or use of the property transferred are a "substantial element" under the agreement if they constitute more than fifty percent of the total transfer consideration.\textsuperscript{66} The existence of any of these factors in the transfer of a franchise, trademark, or trade name will defeat long-term capital gains treatment. Very little transferor control over the transferee of a franchise, trademark or trade name is required to disqualify gain from capital gains treatment.

The term "franchise" is defined as the right to distribute, sell, or provide goods, services, or facilities within a specified area.\textsuperscript{67} Under Section 1253, payments contingent on the productivity, use or disposition of a trademark, trade name or franchise, or payments made in consideration of a transfer of a franchise, trademark or trade name in which the transferor retains a significant power, right, or continuing interest, are to be taxed as ordinary income to the transferor in all cases.\textsuperscript{68} The extensive list of rights under Section 1253(b)(2), defining "significant power, right, or continuing interest," makes clear the intent of Congress that gain from the transfer of a franchise, trademark or trade name ordinarily be taxable as ordinary income, not as capital gain.\textsuperscript{69}

5. Trade Secrets, Know-How, Trade Names

This form of industrial property is generally treated, for the purpose of determining whether there was a sale or exchange, in the same fashion as patented industrial property.\textsuperscript{70} This is particularly so when know-how and trade secrets are transferred with patents in the same agreement and "closely interrelate as a bundle of rights."\textsuperscript{71} Since this property has no determinable life span, it should be transferred in perpetuity. The test for whether there has been a sale of know-how is whether the transferee

\textsuperscript{65} I.R.C. § 1253(b)(2) (1976).
\textsuperscript{67} I.R.C. § 1253(b)(1) (1976).
\textsuperscript{68} I.R.C. § 1253(a), (c) (1976).
\textsuperscript{69} See I.R.C. § 1253(b)(2) (1976).
\textsuperscript{70} See Pickren v. United States, 378 F.2d 595, 599 (5th Cir. 1967) ("Secret formulas and trade names are sufficiently akin to patents to warrant the application, by analogy, of the tax law that has been developed relating to the transfer of patent rights . . . "). See also Glen O'Brien, 70 T.C. at 502-05; PPG Industries v. Comm'r, 55 T.C. 928, 1012-15 (1970); Rev. Rul. 71-564, 1971-2 C.B. 179.
\textsuperscript{71} Hooker Chemicals, 591 F.2d at 659.
acquires full control over its use and disclosure.\textsuperscript{72}

**III. Transfer Mechanisms**

**A. Varieties**

There are several ways to export technology.

1. **Sale of High-Technology Goods**

It is possible to export "embodied" technology (i.e., to sell high-technology goods abroad). Certain provisions of the Code permit the deferral of taxation on a portion of income from exports by Domestic International Sales Corporations (DISCs).\textsuperscript{73} These provisions are probably unavailable, however, unless the DISC does little but export goods, since a DISC must have ninety-five percent of the adjusted basis of all its assets fall within the category "qualified export assets," at the close of the taxable year.\textsuperscript{74} Patents, trademarks and other forms of industrial property are not "qualified export assets."\textsuperscript{75} Technology exporters selling a substantial amount of high-technology goods should consider establishing a DISC as an incorporated export pocketbook.\textsuperscript{76}

2. **Licensing of Technology**

Licensing is the most common technology export method. Licensing can be exclusive, or non-exclusive (more than one licensee); direct or indirect; perpetual or for a term; and can be remunerated in a variety of ways. These and other variations in licensing agreements often have antitrust consequences, but the variations above are those that typically have tax consequences under the Code.

Both patented and unpatented industrial property can be licensed. The careful licensing of patented or unpatented industrial technology

\textsuperscript{72} Id. at 660.

\textsuperscript{73} I.R.C. §§ 991-994 (1976 & Supp. V 1981). A DISC is defined in I.R.C. § 992(a)(1) (1976) as a corporation, incorporated under the laws of any state, meeting each of these four requirements:

A. For the taxable year in question, 95% or more of its gross receipts were qualified export receipts, as defined in I.R.C. § 993(a) (1976).

B. The total adjusted basis of its qualified export assets equalled or exceeded the total of the adjusted basis of all the corporation's assets, at the close of the taxable year in question.

C. The corporation had no more than one class of stock, which had a total outstanding par (or stated) value greater than $2,500 on any day of the taxable year in question.

D. The corporation elected under I.R.C. § 992(b) (1976) to be treated as a DISC for the taxable year in question.

\textsuperscript{74} I.R.C. § 992(a)(1)(B) (1976).


\textsuperscript{76} This article does not discuss the DISC at length, because its focus is not the taxation of income from the sale of goods. For a general discussion of DISCs, see Note, Domestic International Sales Corporations (DISCs): How They Provide a Tax Incentive For Exports, 14 Vand. J. Transnat'l. L. 535 (1981).
ordinarily carries with it the possibility of long-term capital gains treatment under the Code.

3. **Furnishing Technical Services Including the Training of Foreign Personnel**

Furnishing technical services abroad will usually result in ordinary income to the U.S. technology transferor unless, as explained above, a modest amount of personal service income is earned in connection with the sale or exchange of a capital asset or Section 1231 property. This will also have tax consequences for the individuals, often U.S. persons, who provide the services abroad.

4. **Branch operations**

All branch operation income and loss is treated as the U.S. corporation's income and loss, since U.S. corporations are taxed on their worldwide income. The discussion of the foreign tax credit, below, is generally applicable to foreign branch operations.

5. **Operation Through a Foreign Subsidiary**

A number of special tax provisions arise when a U.S. taxpayer does business abroad through a related entity. These are discussed in Part IV of this article.

B. **Three Common Arrangements for Exporting Technology Through Licensing**

1. **Direct License**

In this form of technology transfer, the U.S. technology owner grants a license to a related or unrelated foreign licensee.

2. **Indirect License**

The U.S. technology owner grants a license to a foreign related licensee, which then sublicenses the technology to an unrelated sub-licensee.

3. **License for Equity**

In this situation the U.S. technology owner grants a license to a transferee in exchange for equity participation in the foreign company transferee. The transferor should (1) make sure that the exchange is tax-free under both U.S. and foreign country law; (2) be aware of any controls on foreign investment and company ownership in the technology-

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77 See supra notes 22-25 and accompanying text.
79 See infra notes 107-119 and accompanying text.
80 See infra notes 82-106 and accompanying text.
receiving country; and (3) see whether an applicable tax treaty reduces
the tax rate on dividends. The U.S. technology exporter choosing this
form of transaction should inquire into the feasibility of a tax-free trans-
fer of technology for stock pursuant to Sections 351 and 367, as discussed
below.\textsuperscript{81}

4. Forms of Compensation

These are as varied as the imagination. They include single lump-
sum cash payments; installment payments unrelated to performance; pe-
riodic payments on the basis of performance, sales or production; divi-
dends from equity participation; and exchanges, including cross-licensing
agreements.

IV. Special Rules for Related Parties

A. Rulings Under Section 367

1. Statutory Background

Section 1249(a) of the Code provides that gain from the sale or ex-
change of a patent, invention, model, design (whether or not patented),
copyright, secret formula or process, or any other similar property right,
to any foreign corporation by any U.S. person which controls such for-
eign corporation, will be considered ordinary income. "Control" means
that the U.S. person, using the attribution rules of Section 958, owns
directly or indirectly stock possessing more than fifty percent of the total
combined voting power of all classes of stock entitled to vote.\textsuperscript{82}
Overlapping with Section 1249 to some extent, in taxing the exchange of prop-
erty to a foreign corporation, is Section 1491, which imposes a thirty-five
percent excise tax on gain from the transfer of property by a U.S. citizen,
resident, corporation, partnership, estate or trust, to a foreign corpora-
tion as paid-in surplus or as a contribution to capital.\textsuperscript{83} The gain on
which the excise tax is imposed is defined as the excess of the fair market
value of the property transferred over the sum of the transferor's adjusted
basis and the gain recognized by the transferor at transfer.\textsuperscript{84} However,
an exception is made to the application of both these rules when the
transfer of property to the foreign corporation is made in tax-free fashion
under Section 351 pursuant to a ruling under Section 367.\textsuperscript{85}

Under Section 351, gain or loss is not recognized if property is trans-
ferred to a corporation by one or more persons solely in exchange for
stock or securities and if, immediately after the exchange, the transferors

\textsuperscript{81} See infra notes 90-106 and accompanying text.
\textsuperscript{82} I.R.C. § 1249(b) (1976).
are in "control" of the corporation.86 "Control" means ownership by the
transferors of at least eighty percent of (1) the total combined voting
power of all classes of stock entitled to vote, and (2) the total number of
shares of all other classes of stock.87 Section 367 establishes a mechanism
whereby an exchange of property for stock in a foreign corporation can
be made free of taxation. Section 367(a)(1) establishes a presumption
that the foreign corporation shall not be considered a corporation (thus
defeating Section 351 treatment) unless "pursuant to a request filed not
later than the close of the 183d day after the beginning of such transfer
it is established to the satisfaction of the [Treasury] Secretary that
such exchange is not in pursuance of a plan having as one of its principal
purposes the avoidance of Federal income taxes."88 Despite the regula-
tions issued by the Treasury Department under Section 367, courts have
not lost sight of Congress' primary goal, the elimination of tax
avoidance.89

2. Section 367 Ruling Procedure

a. Transfer of Know-How. The requirements and procedure for se-
curing a Section 367 ruling for a transfer of know-how are established in
Revenue Rulings and Revenue Procedures.90 For know-how to consti-
tute "property" under Section 351, it must be secret and legally pro-
tected in the country to which it is being transferred; the transfer must be
an exclusive grant within at least the country to which it is transferred,
and must contain all substantial rights to the know-how; and it must be
transferred, at a minimum, for the period for which it remains secret, if
not in perpetuity.91

A know-how transferor seeking tax-free treatment under Section 351
must make a variety of representations in his Section 367 application to
the IRS. These include representations that the know-how is property
under Section 351, that it is protected under the applicable foreign law,
that related services are ancillary and subsidiary to the property trans-
fer92 or that the transferor will be compensated separately for services at
an arm's length rate, and that the know-how is secret, unique, original,
novel and adequately safeguarded.93 The Revenue Procedure also lists
certain factual criteria necessary for the making of such
representations.94

86 I.R.C. § 351(a) (1976).
87 I.R.C. §§ 351(a), 368(c) (1976).
94 These criteria are that the know-how is not revealed by a patent or patent application,
b. Transfers of Other Industrial Property. Guidelines for successfully securing a Section 367 ruling with regard to Section 351 tax-free exchanges of stock in a foreign corporation for other industrial property are set out in a Revenue Procedure. These guidelines indicate that property transferred to a foreign corporation controlled by the transferor ordinarily receives favorable treatment, but certain types of property interests will not. These include property as to which the transferor is a licensor, unless the transferee foreign corporation is the licensee; property transferred under circumstances making it reasonable to believe that the property will thereafter be again leased or licensed by the transferee; and patents, trademarks or other similar property (foreign or domestic) used in connection with sales or manufacturing in the United States. These items of property, along with certain others, are called "tainted," and a favorable Section 367 ruling will not be issued unless the transferor pays a "toll charge" by agreeing to include appropriate portions of gain on the tainted property in his gross income for the tax year of transfer.

The property transferred must be used in the active conduct of a trade or business by the foreign corporation. It is contemplated that the foreign corporation has a need for a substantial investment in fixed assets or will be engaged in the purchase and sale abroad of manufactured goods.

There has been some controversy regarding what an "exchange" of industrial property is for Section 351 purposes. The IRS took the position that an "exchange" for Section 351 purposes was identical to a "sale or exchange" for Section 1231 purposes, in the case of a patent. The IRS said there was no Section 351 transfer of a patent unless the transferor transferred "all substantial rights" to the patent. This view has been rejected by the Court of Claims.

No particular form for a ruling request is required, but certain procedural rules must be followed. It is important that such requests be

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96 Id. § 3.02(l), 1968-1 C.B. at 823.
97 Id. § 3.02(l)(b), 1968-1 C.B. at 824.
98 Id. § 3.02(l)(d), 1968-1 C.B. at 825.
99 Id. § 3.02(1), 1968-1 C.B. at 823.
101 See E.I. duPont de Nemours & Co. v United States, 471 F.2d 1211 (Ct. Cl. 1973) (refusing to use a § 1235 "all substantial rights" test in a § 351 case involving an exchange of stock for patent rights because purpose of § 351 was to make tax-free certain exchanges on which taxpayers realized no real gain, whereas purpose of § 1235 was to ensure that only sales, and not licenses, received advantageous capital gains tax treatment).
timely filed (i.e. no later than the 183d day after the date of the beginning of the exchange). The taxpayer, not his agent, must sign the request under penalty of perjury. Adverse rulings may be appealed administratively, and then to the Tax Court.103

B. Reallocation of Income Under Section 482

Section 482 of the Code provides the IRS with great discretion to reallocate income, credits and deductions among related taxpayers. It provides:

In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Secretary may distribute, apportion or allocate gross income, deductions, credits or allowances between or among such organizations, trades or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such organizations, trades, or businesses.104

The extensive regulations issued thereunder seek to require all pricing between related entities to be fixed at an arm's length amount. "The standard to be applied in every case is that of an uncontrolled taxpayer dealing at arm's length with another uncontrolled taxpayer."105 Because a Section 482 reallocation based on unrealistic transfer pricing is one of the most common IRS attacks on technology transfer transactions, and since there are no "safe havens" provided in the regulations, U.S. technology owners transferring technology to a related foreign entity should carefully consider the factors set out in the regulations in reaching an arm's length consideration figure.106 The transferor should also be certain that the consideration reflects a reasonable allocation of the risks and costs of developing the property.

V. United States Foreign Tax Credit

Under certain circumstances, U.S. taxpayers can take tax credits against their U.S. tax liability on their worldwide income for taxes paid to a foreign country.107 They can generally do so to the extent that the

106 Treas. Reg. § 1.482-2(d)(2)(iii), 26 C.F.R. § 1.482-2(d)(2)(iii) (1983) lists the following specific factors: prevailing rates for similar property, terms of offers made by competing transferees, the terms of the transfer itself, the uniqueness of the property transferred, the degree of protection offered by the patent laws of relevant countries, the value of any ancillary services, the profits to be gained by the transferee through use of the property transferred, any starting-up expenses required to use the transferred property, the availability of substitutes for the transferred property, the price for similar transactions between unrelated parties, and the costs paid by the transferor to develop the property.
credits do not reduce U.S. income taxation of U.S. income.\textsuperscript{108}

The first section of this part of the discussion centers on the ordinary foreign tax credit rules, applicable to all U.S. taxpayers paying foreign taxes on foreign source income. Branch income, dividend income and royalty income (subject to a special provision for a netting of foreign capital gains with any U.S. capital losses over U.S. capital gains)\textsuperscript{109} from foreign countries are each eligible for the treatment explained in Part A, below. The "deemed paid" foreign tax credit, available to U.S. corporate taxpayers with foreign subsidiaries, is explained in Part B. U.S. taxpayers can also take a deduction rather than a credit for foreign taxes paid, but a credit almost always results in a lower total tax amount.

\textit{A. Foreign Tax Credit}

Most U.S. taxpayers, including all U.S. corporations, citizens and residents, are eligible to elect the foreign tax credit for foreign taxes paid or accrued to any foreign country. The tax can be taken, dollar-for-dollar, for creditable foreign taxes paid or accrued up to the limitation as expressed in Section 904(a): "The total amount of the credit taken under Section 901(a) shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources without the U.S. (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year."\textsuperscript{110} Expressed mathematically, the maximum foreign tax credit is the product of the taxpayer's total U.S. tax (before credits) and a fraction, the numerator of which is the taxpayer's foreign source taxable income, and the denominator of which is the taxpayer's worldwide taxable income.

Foreign taxes for which a credit can be taken are "income, war profits and excess profits taxes."\textsuperscript{111} Generally, the more closely a foreign tax resembles U.S. federal income tax, the more likely it is that the tax is creditable.\textsuperscript{112} A foreign tax is an income tax if and only if (1) it is not payment for a specific economic benefit, (2) it is based on "realized net income" as defined at length in the regulations, and (3) the tax is based on "reasonable rules regarding source of income, residence, or other bases for taxing jurisdiction."\textsuperscript{113} Sales taxes, value-added taxes, property taxes, and taxes based on gross receipts are generally not creditable. However, certain items which are taxed on gross amounts are entitled to the foreign tax credit. These items are important to U.S. technology transferors. They include items similar to those items of passive income

\textsuperscript{111} I.R.C. § 901(b)(1) (1976).
such as interest, dividends and royalties spelled out in Section 871(a).\textsuperscript{114} Thus, withholding taxes imposed by foreign countries on dividend and royalty income are generally creditable.

Often, license agreements will contain net royalty provisions which take the U.S. foreign tax credit into account. Under this type of agreement, the foreign licensee will pay the foreign withholding tax. However, the U.S. taxpayer will include this in his gross royalty income (called the "gross-up"), so that he can take advantage of the withheld foreign tax as a U.S. tax credit. This technique is accepted by the IRS.\textsuperscript{115}

\textbf{B. The Deemed Paid Tax Credit}

To avoid penalizing U.S. corporations which do business abroad through separately incorporated subsidiaries, Congress created the deemed paid tax credit.\textsuperscript{116} A U.S. corporation which owns ten percent or more of the voting stock in a foreign corporation is entitled to a tax credit for a portion of creditable foreign taxes paid by the foreign corporation on the profits that produced the dividend.\textsuperscript{117} The tax credit is available down to a third-tier subsidiary. "Dividends" and "accumulated profits" parallel their meaning elsewhere in the Code.\textsuperscript{118} Expressed mathematically, the amount of the U.S. corporate shareholder's deemed paid foreign tax credit is equal to the product of the foreign corporation's foreign creditable tax and a fraction, the numerator of which is the dividend received from the foreign corporation's earnings for the tax year, and the denominator of which is the foreign corporation's accumulated profits (after taxes) for the same year. The U.S. corporation must add the deemed paid tax credit to its gross income before taking the deemed paid credit.\textsuperscript{119}

\textbf{VI. Tax Treaties}

\textit{A. Generally}

The U.S. technology owner about to transfer his technology abroad must carefully examine any tax treaty which exists between the U.S. and the country to which the technology is to be transferred. This examination should be made in conjunction with a study of the technology-im-
porting country’s tax system, and a review of U.S. income tax consequences of payments made pursuant to the transfer. Tax treaties vary in their effects on income derived from technology transfers, and thus even the broadest summary of typical tax treaty provisions is beyond the scope of this article. However, it should be kept in mind that tax treaties generally are intended to reduce or eliminate excessive double taxation of income flowing from one treaty country to another. Tax treaties often reduce the ordinary withholding rate on the expatriation of passive income, such as dividends and royalties. Tax treaties generally apply only to federal income taxation and not to any state, local or special taxes.

In conducting this examination, the U.S. technology transferor should also examine the tax provisions of the foreign country regarding the deductibility of royalty payments by the technology transferee. Some countries, especially in Latin America, place upper limits on the deductibility of royalty payments to the licensee, or bar the deduction of royalty payments made to technology licensors when the licensee does not meet certain minimum indigenous ownership requirements.

B. Factors to Consider

1. Characterization of Income

For purposes of determining whether foreign treaty country source income will be subject to the reduced withholding rate provided in a tax treaty, the income must be characterized either under the treaty itself, or under the foreign country tax law. Thus, assuming that the other treaty country treats income from capital gains differently from ordinary income, it is important to determine the nature of the asset transferred and the transaction, not only under U.S. tax law, but under the treaty and applicable foreign country tax law. Some tax treaties permit capital gains to be repatriated without the imposition of any source country withholding tax, so long as the U.S. income recipient has no “permanent establishment” in the foreign country.120 Quite often, tax treaties reduce the withholding rate on the payment of “royalties.”121 It is important to determine how royalties are defined under the treaty or the foreign country’s tax law. While it is reasonable to assume that payments which are contingent on production, sales or the like, derived from the transferred industrial property, are “royalties,” it is important to be certain that this is the case. The U.S. technology transferor should also examine the tax treaty to see whether the treaty makes a distinction between industrial and commercial royalties on the one hand, and artistic royalties on the

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other. Some countries with whom the U.S. has tax treaties afford no reduction of the withholding tax for industrial and commercial royalties. Other countries permit a reduction of the withholding tax, but only for royalties which are "reasonable" in amount. Reasonableness may be defined in the treaty or in the foreign country's tax law as a percentage of gross income or in another fashion.

Tax treaties often reduce the withholding tax for dividends if the U.S. transferor exchanges his technology for stock in the transferee corporation. Where this is the mechanism for technology transfer, assuming that the exchange of technology for stock is tax-free under Section 351, the transferor must still determine that the exchange is a tax-free exchange in the foreign country.

2. Source Rules

It may be reasonable to think of the source of income derived from a technology transfer as the country where the technology is used. However, each tax treaty and each foreign country has its own source rules and these should be examined.

3. Transferor's Presence in Foreign Country

Many tax treaties allow receipt of tax benefits in the form of a reduced or eliminated withholding tax rate only if the transferor does not maintain a "permanent establishment" in the foreign country. Some countries go further and afford foreign transferors tax benefits even though the transferors have permanent establishments in the foreign country, if the income derived from the transfer is not "connected" with the permanent establishment in the foreign country.

4. Inconsistent Rulings

Occasionally, a U.S. taxpayer is subject to rulings from the IRS and the taxing authority of the treaty country which are either inconsistent or which lead to adverse tax consequences not intended by the treaty. There are procedures by which the taxpayer can invoke the assistance of the Associate Commissioner (Operations) of the IRS in attempting to resolve these matters, in consultation with the competent authority of the other taxing jurisdiction. These procedures are set out in two Revenue

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123 See, e.g., id.
124 See, e.g., Norway Treaty, supra note 121, art. 10(4) (defining "reasonable" as "an amount which would have been paid to an unrelated person").
125 See, e.g., id., art. 8.
126 See, e.g., France Treaty, supra note 120, arts. 4, 6, 12.
Procedures.128

C. Tax Havens

It is sometimes possible to achieve tax savings on technology-related income in the form of royalties and dividends by routing the income through a third country tax haven.129 Assume, for example, that Country X, with whom the United States has no tax treaty, ordinarily imposes a fifty percent withholding tax on all expatriated royalties and dividends. Further assume that the United States and Country X both have tax treaties with Country NA, which reduce the withholding tax rate on royalties and dividends to five percent. A considerable tax savings can be achieved if the royalties and dividends are successfully routed through Country NA. However, these savings are becoming increasingly difficult to achieve, for at least three reasons. First, the U.S. is aggressively renegotiating its tax treaties with tax haven jurisdictions to reduce such tax savings.130 Second, the Model Tax Treaty of the Organization for Economic Cooperation and Development (OECD) contains a provision permitting reduction of or exemption from withholding tax on royalty income only when the recipient is the beneficial owner of the royalties and not a mere intermediary.131 The OECD Model Treaty is being widely used in the renegotiation of bilateral tax treaties. Third, the IRS has stated that it will not issue a Section 367 ruling, necessary for a determination that a transfer of industrial property in exchange for stock is tax-free under Section 351, if the technology is transferred so that it can later be sublicensed.132 Thus, a transfer of technology in exchange for stock to a tax haven corporate conduit for later sublicensing will not be a tax-free exchange under Section 351.

VII. Treatment of Blocked Income

A. Rule: Income is Taxable

Currency restrictions are increasingly common, particularly in developing countries. Licensors often find that they are not paid their royalties in dollars or other hard currencies and sometimes find that they are unable to repatriate any money from the country of the technology licensee. The tax rule in such event is well-established:

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128 See Rev. Proc. 82-29, 1982-1 C.B. 481 (allocation of income and deduction between a U.S. taxpayer and a related person subject to another country's tax jurisdiction); Rev. Proc. 77-16, 1977-1 C.B. 573 (availability of U.S. foreign tax credit against foreign taxes paid, exemptions from and reduction in foreign tax rates, and other benefits and safeguards).

129 It is not generally possible to use a tax haven for tax savings in connection with capital gains. See the discussion of I.R.C. § 1249 (1976), supra notes 82-89 and accompanying text.


131 Organization for Economic Co-Operation and Development, Model Convention for the Avoidance of Double Taxation with Respect to Taxes on Income and Capital, art. 12, 1 Tax Treaties (CCH) ¶ 151 (1980).

We do not agree with [the] argument that inability to expend income in the United States, or to use any portion of it in payment of income taxes, necessarily precludes taxability. In a variety of circumstances it has been held that the fact that the distribution of income is prevented by operation of law, or by agreement among the parties, is no bar to its taxability.\textsuperscript{133}

Fortunately, courts take a realistic view of which currency exchange rate should apply, and will use a free market rate if available, rather than an artificially high official exchange rate or a later free exchange rate, in measuring foreign income paid in a blocked currency.\textsuperscript{134} In a ruling regarding the U.S. estate taxation of foreign assets and income, the IRS said that "a taxpayer who has income represented by a restricted foreign currency should translate such income to U.S. currency by using the rate of exchange that will most properly reflect his income. He does not have a free election to use whatever rate he wishes."\textsuperscript{135}

\textbf{B. Exception: Income Not Usable Even in Source Country}

There is authority to the contrary when the taxpayer is not only unable to convert the foreign income to dollars and repatriate the income, but is also unable to make any profitable use of the foreign currency in the country where it is blocked. Most of the "blocked income" cases date from World War II.\textsuperscript{136}

\textbf{C. Recent Revenue Ruling: Option to Defer}

In 1974, the IRS restated the method it had created to allow taxpayers to defer Federal income taxation of blocked income.\textsuperscript{137} The new ruling gives taxpayers who have "deferrable income" the option of filing an information return.\textsuperscript{138} Deferrable income is income received by, credited to or accrued to a taxpayer that, owing to monetary, exchange or other restrictions imposed by a foreign country, is not readily convertible into U.S. dollars or into other money or property which is convertible into U.S. dollars. Deferrable income ceases to be deferrable when it becomes convertible, when it is actually converted (whether or not in accordance with law), or when it is used for personal expenses or in some fashion given away or distributed.\textsuperscript{139} If deferrable income is used to purchase business or investment property, the property bought shall retain a "deferred income basis," which will be taken into account on disposition of the property.\textsuperscript{140}

\textsuperscript{133} Eder v. Comm’r, 138 F.2d 27, 28 (2d Cir. 1943).
\textsuperscript{134} See id. at 28; Cooper v. Comm’r, 15 T.C. 757, 765 (1950).
\textsuperscript{136} See, e.g., United Artists Corp. of Japan v. Comm’r, 13 T.C.M. (P-H) ¶ 44210 (1944).
\textsuperscript{137} Rev. Rul. 74-351, 1974-2 C.B. 144.
\textsuperscript{138} The return is called "Report of Deferrable Foreign Income, pursuant to Rev. Rul. 74-351." See Rev. Rul. 74-351, 1974-2 C.B. at 144.
\textsuperscript{139} Rev. Rul. 74-351, 1974-2 C.B. 144.
\textsuperscript{140} Id.
VIII. Conclusion

There is no question that for the United States to continue to prosper, it must remain on the technology frontier. If it succeeds in doing so, technology export transactions will continue to increase in frequency. Tax savings for income derived from technology export are possible through careful planning. This article attempts to explain how the Code applies to income from technology export transactions, and points to areas where tax savings exist.