

# FEDERAL TAX CONSEQUENCES OF INTERNATIONAL BOYCOTTS

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## I. INTRODUCTION

The Tax Reform Act of 1976<sup>1</sup> ended the sixty-three year history of tax neutrality towards the foreign law compliance activities of United States taxpayers and foreign corporations with United States shareholders. The Internal Revenue Code now requires the reporting of activities which are or have the potential of constituting compliance with international boycotts and provides three tax sanctions for specified boycott activity. The haste with which these new provisions were enacted and the rapid shifts in administrative interpretations thereof make an accurate prediction of their effects impossible. As Treasury Secretary Simon noted at the time, an analysis of the boycott sections is "made extremely difficult by the complexity and lack of clarity"<sup>2</sup> of the statutory language and the legislative history.<sup>3</sup> Nevertheless it is clear that significant changes in the way United States businesses conduct their international operations will result. The aim of this Article is to review the newly imposed reporting requirements, the circumstances in which the tax sanctions operate and their effect. Of major importance in this analysis are the Guidelines issued by the Treasury.<sup>4</sup>

## II. REPORTING REQUIREMENTS

Section 999<sup>5</sup> imposes two different reporting requirements. The first relates to business operations that are or may be associated with boycott activity and the second covers actual boycott participation and requests therefor.<sup>6</sup>

Broadly stated, the first reporting requirement mandates that a

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<sup>1</sup> Pub. L. No. 94-455, 90 Stat. 1520 (1976).

<sup>2</sup> Letter from William E. Simon to Senator Abraham Ribicoff, (Dec. 28, 1976).

<sup>3</sup> S. REP. No. 938, pts. I and II, 94th Cong., 2d Sess. *reprinted in* [1976] U.S. CODE CONG. & AD. NEWS 3439, 4030; S. REP. No. 1236, 94th Cong., 2d Sess. 465-70 (1976).

<sup>4</sup> 43 Fed. Reg. 3454 (1978). All references to Guidelines are to the January 25, 1978 Guidelines [hereinafter cited as TRA Guidelines]. These completely supersede earlier Guidelines published in the Federal Register on November 11, 1976, January 5, 1977 and August 17, 1977, respectively.

<sup>5</sup> All references to sections are to the Internal Revenue Code of 1954, as amended.

<sup>6</sup> Both of these reports are made on the same form, Form 5713.

"reporting person" report its "operations" (and those of its affiliates) which are in or related to boycotting countries or with the governments, companies, or nationals of boycotting countries. However, the Treasury has waived reporting in certain situations, as described below.

#### A. *Reporting Persons*

There are six types of reporting persons: (1) citizens and residents of the United States, (2) partnerships formed under the laws of a State of the United States, (3) United States corporations,<sup>7</sup> (4) estates or trusts other than foreign estates or trusts, (5) foreign persons or entities<sup>8</sup> that claim the benefit of the foreign tax credit or own stock of a DISC, and (6) United States persons who own (directly or indirectly through foreign corporations, partnerships, trusts or estates) ten percent or more of the total combined voting power of all classes of voting stock of a foreign corporation.

#### B. *Operations*

A reporting person must report "operations" that involve or may involve international boycott activity. The Treasury Guidelines define "operations" broadly and state that it "encompasses all forms of business or commercial activities and transactions (or parts of transactions) whether or not productive of income."<sup>9</sup> The Guidelines then narrow the term slightly by providing that the receipt of retirement benefits, such as Social Security and pension payments, and passive investment income do not constitute business and commercial activities.<sup>10</sup> Further, the Treasury has held that the performance of personal services as an employee does not constitute "operations."<sup>11</sup> While not expressly stated, it is likely that any activity of a corporation, partnership or joint venture will constitute an operation, except for the receipt of passive investment income.

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<sup>7</sup> Under section 1504(d) certain Canadian and Mexican corporations are classified as domestic corporations.

<sup>8</sup> It is arguable that foreign corporations are never reporting persons because section 999(a)(1) states that "in the case of a foreign corporation such report shall be required only of a United States shareholder . . . of such corporation." However, Guideline A-1 ignores this statutory language and specifically treats foreign corporations as reporting persons. TRA Guideline A-1, 43 Fed. Reg. 3454 (1978).

<sup>9</sup> TRA Guideline B-1, 43 Fed. Reg. 3458 (1978).

<sup>10</sup> TRA Guideline B-2, 43 Fed. Reg. 3458 (1978).

<sup>11</sup> TRA Guideline B-3, 43 Fed. Reg. 3458 (1978). However, the performance of those same services as an independent contractor would be an "operation."

Reporting is required only of those operations which are "in" or "related to" a boycotting country or with the government, a company, or a national of a boycotting country. Each of the quoted words has a special meaning, as is discussed below.

An operation is conducted "in" a boycotting country if any part of it is carried on in a boycotting country.<sup>12</sup> Presumably the geographical definition of a country for this purpose follows the recognition given by the State Department. Thus, the west bank of the Jordan River would be part of Jordan (a listed boycotting country) and not Israel. While there is no clear State Department policy with respect to the Continental Shelf outside of the territorial sea, by analogy to the United States tax position under section 638, this should be treated as part of the adjacent country, at least with respect to natural resources.

An operation is "related to" a boycotting country only if it meets three tests: (i) it is carried on entirely outside a boycotting country, (ii) it is for the government, a company, or a national of a non-boycotting country, and (iii) the person having the operation knows or has reason to know that the specific goods, services or funds produced by the operation are intended for use in a boycotting country, for use by or for the benefit of the government, a company, or a national of a boycotting country, or for use in forwarding or transporting to a boycotting country.<sup>13</sup> While there is no obligation to inquire as to the destination of goods or services, it is likely in most situations that the person producing goods or services will know or have reason to know their ultimate destination.

Finally, operations are with a government, a company, or a national of a boycotting country if the operation is carried on wholly outside a boycotting country either for or with the government, a company, or a national of a boycotting country.<sup>14</sup> While it may be relatively easy to determine whether a transaction involves the government or a company of a boycotting country, there may be much more difficulty in determining whether a national of a boycotting country is involved. There is no lack-of-knowledge exception. Thus, for example, if the payment of dividends or interest by a United

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<sup>12</sup> TRA Guideline B-1, 43 Fed. Reg. 3458 (1978).

<sup>13</sup> *Id.*

<sup>14</sup> TRA Guideline B-1 states that for the purposes of applying the section 999(b)(1) presumption and the tax sanctions (including the computation of the international boycott factor) such operations are "related to" a boycotting country. TRA Guideline B-1, 43 Fed. Reg. 3458 (1978).

States company is a reportable "operation," it will be required to determine which shareholders and creditors are nationals of boycotting countries.

The distinctions between "in", "related to", or "with" are immaterial for reporting purposes. These terms define only what must be reported and have nothing to do with the way in which they are reported. Thus, it is of no importance to determine which of the three categories apply to a particular transaction. It is sufficient to conclude that the operation is covered by at least one of the provisions.

Reportable operations are not limited to those actually conducted by the reporting person. Also included are the operations by a trust that is treated as being owned by the reporting person under section 671. In addition, the operations of certain related entities must be reported:

(1) Where the reporting person is a member of a controlled group, the reportable operations of all members must be disclosed.

(2) Where the reporting person is a United States shareholder (owning stock within the meaning of section 958(a)) of a foreign corporation, the reportable operations of that foreign corporation must be disclosed.

(3) Where the reporting person is a partner in a partnership, the reportable operations of that partnership must be disclosed.

(4) Where the reporting person controls a corporation (within the meaning of section 304(c)) that has reportable operations, those operations must be disclosed.

(5) Where the reporting person is a corporation that is controlled (within the meaning of section 304(c)) by a person that has reportable operations, those operations must also be disclosed.

The distinction between the direct and grantor-trust operations, on the one hand, and those of certain related entities, on the other hand, is important in determining the year in which the reporting person reports such operations and parallels the timing of the reporting of income for United States income tax purposes.

### C. *Waivers*

The Guidelines waive reports of operations from several classes of reporting persons under certain circumstances. Not all of the Guideline waivers are repeated in the Instructions to the Form 5713. The status of the Guideline waivers that do not appear in the Instruc-

tions is somewhat unclear. Section 999(a)(1) requires reports "in such manner as the Secretary prescribes" and this can only be done by "rules and regulations" according to section 7805(a). Presumably the Guidelines are such "rules", for they clearly are not "regulations", and are therefore effective to grant reporting waivers under section 999(a)(1).

The principal waiver involves certain members of a controlled group<sup>15</sup> of corporations. If there is a controlled group with a common parent and that common parent files a consolidated income tax return and files the boycott report on behalf of all of the members of the controlled group, the reporting requirement is waived for those members included in the consolidated income tax return, and for each member not included in the consolidated tax return which meets all of the following tests: (i) no reportable operations itself, (ii) no stock ownership, direct or indirect, in any company with reportable operations, (iii) no receipt of a request to participate in or cooperate with an international boycott, (iv) no stock ownership, direct or indirect, in any company that received such a request, and (v) no entitlement to (or forfeiture of) any tax benefit of deferral, DISC or the foreign tax credit. The remaining controlled group members that are not included in the consolidated return must continue to file their own reports.<sup>16</sup> As the applicability of this waiver depends upon a common parent, a controlled group consisting of brother-sister corporations will not qualify for this reporting exemption.

The second waiver applicable to controlled groups relates to the operations of a foreign parent or foreign sister corporation of a domestic reporting company. It is applicable only if the domestic company is either (i) not entitled to any benefits of deferral, DISC, or the foreign tax credit, or (ii) forfeits those tax benefits to the extent they are attributable to boycott operations. The waiver applies only to the operations of the foreign parent or foreign sister corporation and therefore does not affect the reporting obligations of the domestic company as to its own operations or the operations of all other

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<sup>15</sup> A "controlled group" is defined by reference to section 993(a)(3), which in turn refers to section 1563, and may generally be summarized as parent-subsidiary or brother-sister chains of corporations where the stock ownership is more than 50%.

<sup>16</sup> TRA Guideline A-3, 43 Fed. Reg. 3455 (1978). Those separate boycott reports will cover the operations of the entire controlled group and not just the operations of that particular member. TRA Guidelines A-13, 43 Fed. Reg. 3455-56 (1978).

domestic members of each controlled group of which the domestic company is a member. The waiver applies only to the reporting obligation with respect to controlled group operations. Therefore, if the United States company owns, within the meaning of section 958(a), stock of its foreign parent or sister corporation amounting to ten percent or more of the total combined voting power of all classes of stock of that foreign corporation entitled to vote, the waiver is effectively lost because the operations of that foreign corporation must be reported by the domestic company as a United States shareholder of the foreign corporation.<sup>17</sup>

Guideline 14B provides a similar controlled group waiver relating to the operations of a foreign parent, a foreign sister or foreign subsidiary of a foreign corporation which is engaged in business in the United States through a branch. It also covers the operations of that foreign corporation which are not related to the United States branch. The waiver is applicable only if the foreign company branched into the United States is either (i) not entitled to any benefits of deferral, DISC, or the foreign tax credit, or (ii) forfeits those tax benefits to the extent they are attributable to boycott operations. The waiver does not exempt from reporting the operations of the United States branch or those of all United States members of each controlled group of which the foreign company with the United States branch is a member.

The only waiver applicable to partners relates to domestic partnerships. Normally, partnership operations are reportable by each of the partners as well as the partnership. However, if the partnership files the boycott report form, and has no operations which constitute participation in or cooperation with an international boycott, then the reporting requirement is waived for each partner that has no other reportable operations.<sup>18</sup> Presumably, if a partner has separate reportable operations, his boycott report must include the partnership operations. While the term "partnership" is not defined, it should be co-extensive with the section 7701(a)(2) definition. Thus an election to be excluded from Subchapter K of the Code, as permitted by section 761(a), should not affect the status of the organization as a partnership for boycott reporting purposes.

There are two waivers applicable to operations where boycott activity is essentially peripheral. The first provides that a company

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<sup>17</sup> TRA Guideline A-14A, 43 Fed. Reg. 3456 (1978).

<sup>18</sup> TRA Guideline A-17, 43 Fed. Reg. 3457 (1978).

(irrespective of its nationality) is not required to report its operations wholly outside boycotting countries, even though it knows or has reason to know that the other party to the operation will use the goods or services in a boycotting country or will sell them for such use, if (i) the other party is not a boycotting country or the government, a national or a company of a boycotting country, (ii) the company does not receive a request to participate in or cooperate with an international boycott, (iii) the company does not, in fact, participate in or cooperate with an international boycott, and (iv) "facilitation" of participation in or cooperation with an international boycott was not one of the principal purposes for the company entering into either the relationship or the transaction.<sup>19</sup> This waiver also applies to individuals and partnerships. The scope of the requirement, that a principal purpose of the transaction or relationship not be facilitation of boycott participation or cooperation, is obscure. For example, if the company is the sole supplier of particular goods or services, so that the other party could not complete its activity in a boycotting country without the supply, does this waiver apply? Similarly, is boycott facilitation a principal purpose of the advice given by an accounting firm to its domestic client in the United States as to the tax cost of boycott conduct, if the client decides it is acceptable and then engages in boycott participation? It is not at all clear whether this waiver applies to a law firm that renders legal advice, outside a boycotting country, which it knows its client (who is not the government, a national or a company of a boycotting country) will use in a boycotting country since that advice may well be necessary to the client's boycott operations.

The second such waiver provides that an individual, company or partnership is not obligated to report operations where the nationality of the other party is incidental to the business conducted. There are four requirements for this waiver:

- (1) All aspects of the operations contemplated by the parties are carried on outside any boycotting country.
- (2) No request for an agreement which would constitute participation in or cooperation with an international boycott is made or received by any party to the operation.
- (3) There is no such agreement in connection with the operation.
- (4) (a) The operation does not involve the importation of property, funds or services from or produced in a boycotting country

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<sup>19</sup> TRA Guideline A-11, 43 Fed. Reg. 3456 (1978).

and the reporting person does not know or have reason to know that the property, funds or services involved in the operation will be used, consumed or disposed of in a boycotting country, or

(b) The value of the property, funds or services involved in the operation does not exceed \$5,000.<sup>20</sup>

This waiver is not as broad as it may appear. The last requirement may be insurmountable when the amount exceeds \$5,000. How is a seller of goods or services ever to know where the funds used by the buyer were produced, that is, earned?

The difference in the reporting requirements for United States companies and foreign companies should be noted. A domestic company must disclose its reportable operations whereas a foreign company need do so only if it claims the foreign tax credit or owns stock of a DISC. Moreover, a domestic company must report on its foreign parent or sister companies if it owns ten percent or more of their stock. On the other hand, a foreign company need not report the operations of its foreign parent or sister corporations unless it owns fifty percent or more of their stock and claims the foreign tax credit or owns stock of a DISC. The obvious conclusion is that a foreign business engaging in United States activities should consider branching a foreign corporation into the United States (and structuring its operations so as to avoid its claiming a foreign tax credit or owning stock of a DISC) rather than using domestic corporations if boycott activities could conceivably be involved, and it desires to avoid the reporting requirements and tax sanctions.

#### D. *Boycotting Countries*

Boycotting countries fall into two categories: listed and unlisted. Listed countries are those specifically designated by the Secretary of the Treasury. There are presently fourteen such countries.<sup>21</sup> Unlisted boycotting countries are those which the reporting person (or any member of the controlled group of which the reporting person is a member) knows or has reason to know requires any person to participate in or cooperate with an international boycott (other than a boycott described in section 999(b)(4)).<sup>22</sup> There is reason to know that a country requires participation in or cooperation with an international boycott *only* if the reporting person receives "what could

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<sup>20</sup> TRA Guideline A-20, 43 Fed. Reg. 3457 (1978).

<sup>21</sup> 42 Fed. Reg. 17560 (1977).

<sup>22</sup> TRA Guideline A-1, 43 Fed. Reg. 3454 (1978). However, an unlisted country cannot be a boycotting country as to persons whose operations are only "related to" that country.



be interpreted as an official request" for such boycott activity. Thus, a reporting person is not charged with constructive notice of the laws and administrative practices of the unlisted countries in or with which it deals. Individual action by a company or national of another country does not make that country a boycotting country. For example, if an Irish customer demands that its American supplier cease doing business with or in the United Kingdom, such a request does not convert the Irish Republic into a boycotting country. This is a very murky area, however, for if the recipient of an "unofficial" request knows that the demand reflects the official policy of the country from which the demand emanates, then the demand may be treated as an "official request". Thus the request of a mainland Chinese company that its American suppliers cease doing business with Taiwan may well convert China into a boycotting country if that request represents the policy of the Chinese government. Moreover, in socialist and developing countries it may be very difficult to distinguish between requests made by individuals or companies and governmental requests since the entire economy may be controlled by the government or the government may have effective control of the requesting company. Therefore, treating a request for boycott participation as an individual matter which does not convert the country into a boycotting country should be thoroughly documented.

The form of the request for boycott activity may be critical. Section 999(a)(1)(B) states that the boycott activity must be "required as a condition of doing business". Similarly, the instructions to Form 5713 use the word "requires".<sup>23</sup> However, the Treasury Guidelines refer to a "request". The statutory language is clear and unambiguous and should be interpreted to make unlisted countries boycotting countries only if there is a *requirement*, not just a request, for boycott participation, which requirement is a condition of doing business in or with that country, or its companies or nationals. Even if an official demand for boycott activity is received, however, the unlisted country will not become a boycotting country if the operation is carried on entirely outside that country.<sup>24</sup>

#### E. *Participation Reports*

The reporting of boycott participation or cooperation is also made

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<sup>23</sup> General Instruction C, Form 5713.

<sup>24</sup> TRA Guideline A-1, 43 Fed. Reg. 3454 (1978).

on the same Form 5713. The only waiver for participation reports relates to unsolicited invitations to tender where the reporter makes no response<sup>25</sup> and to boycott activities where United States law or regulations, or an Executive Order sanctions such participation.<sup>26</sup>

### III. BOYCOTT PARTICIPATION OR COOPERATION

The Code contains no definition of an international boycott. Instead, section 999(b)(3) merely provides that a person participates in or cooperates with an international boycott if he agrees, as a condition of doing business directly or indirectly within a country or with the government, a company or a national of a country:

(1) to refrain from doing business within a country which is the object of an international boycott or with the government, companies or nationals of that country, or

(2) to refrain from doing business with any United States person engaged in trade with another country which is the object of an international boycott or with the government, companies or nationals of that country, or

(3) to refrain from doing business with any company whose ownership or management is made up, all or in part, of individuals of a particular nationality, race or religion, or to remove (or refrain from selecting) corporate directors who are individuals of a particular nationality, race or religion, or

(4) to refrain from employing individuals of a particular nationality, race or religion, or

(5) to refrain from shipping or insuring products on a carrier owned, leased or operated by a person who does not participate in or cooperate with an international boycott.

However, boycotts sanctioned by United States laws, regulations or Executive Orders and those primary boycotts imposed by foreign countries with respect to exports and imports are excepted from this definition. Thus there is no international boycott participation or cooperation by a United States person who agrees not to import Israeli produced goods into Libya or to export Syrian goods to Israel.<sup>26.1</sup>

While the statute has no express requirement that the conduct be boycott motivated before the tax sanctions apply, the Treasury has correctly exempted activities within the literal scope of section 999

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<sup>25</sup> TRA Guideline A-15, 43 Fed. Reg. 3456 (1978).

<sup>26</sup> TRA Guideline A-10A, 43 Fed. Reg. 3455 (1978).

<sup>26.1</sup> TRA Guidelines I-1, I-5, 43 Fed. Reg. 3465-66 (1978).

but which occurred for reasons unrelated to the international boycott. For example if a company is blacklisted because it has previously furnished defective goods, a United States person's agreement not to do business with the black-listed company is not covered by the statute even if the blacklisted company is an Israeli one.<sup>26, 2</sup>

The critical element of this definition is the requirement of an agreement: the taxpayer must "agree" to the boycott participation. In the absence of an agreement, the conduct cannot constitute participation in or cooperation with an international boycott. However, the Conference Committee Report makes it clear that the agreement need not be in writing and that there may be an implied agreement. This is expanded somewhat by the introductory part of the Treasury Guidelines:

[I]n instances where the action described in the question by itself does not, according to the answer, provide sufficient evidence to support an inference that an agreement under section 999(b)(3) exists, an overall course of conduct which includes such action in addition to other factors could support such an inference. . . .

Moreover, the Guidelines repeatedly emphasize this point in the answers.<sup>27</sup>

The Conference Committee Report specifically stated that no agreement would be inferred "from the mere fact that any country is exercising its sovereign rights."<sup>28</sup> Thus, the inability to obtain export or import licenses from a sovereign country for specific goods does not constitute boycott participation through an implied agreement, nor would a taxpayer's inability to bring certain personnel into a country or to bring ships into the waters of that country.<sup>29</sup> However, the Report concludes with the enigmatic statement that: "[I]n addition, a course of conduct of complying with sovereign law may, along with other factors, be evidence of the existence of an agreement." Consequently, the conclusion that a particular course of conduct does not constitute an agreement to participate in boycott activity must be made with extreme care. In the current political climate it is likely that the Treasury will attempt to infer the

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<sup>26, 2</sup> TRA Guideline H-1, 43 Fed. Reg. 3462 (1978).

<sup>27</sup> TRA Guidelines H-3, H-5, H-7, H-9, H-13, H-15, H-17, H-23, H-24, H-25 and M-9, 43 Fed. Reg. 3462-68 (1978).

<sup>28</sup> S. REP. No. 1236, 94th Cong., 2d Sess. 467 (1976).

<sup>29</sup> See TRA Guidelines H-10, H-11, H-12, I-5, J-7 and J-8, 43 Fed. Reg. 3463-67 (1978).

existence of an agreement wherever the conduct is particularly helpful to boycotting countries or particularly offensive to the perceived policy of the present government of the United States. The discussion below concerning boycott participation or cooperation must be viewed in this context.

The Treasury Guidelines make a distinction between an agreement that the laws, regulations, requirements of administrative practices of a boycotting country will "apply" to the performance of a contract and an agreement that the United States company will "comply" with such laws, regulations, requirements and administrative practices.<sup>30</sup> No section 999 agreement will be inferred solely from the former, whereas it will be inferred from the latter. Similarly, when incorporating a subsidiary in a boycotting country or establishing a branch therein, a general acknowledgement that the laws, rules, regulations, and administrative practices of the boycotting country apply to the subsidiary or branch will not support the inference of an agreement to boycott activity. However, if there is an undertaking to comply with such laws, a section 999 agreement would be inferred.<sup>31</sup>

This is a subtle distinction and indicates that great care must be used in wording such an agreement. Translations of agreements from other languages must be viewed with extreme caution in this context. It is the original agreement, not an English translation, that is crucial. It may be desirable to have several translations of this critical clause prepared by different translators to be certain of its real meaning. Moreover, the Guidelines contain a caveat:

However, an overall course of conduct which includes the signing of a contract with such a provision [that local laws will apply] in addition to other factors could support such an inference. Examples of other factors which could give rise to such an inference include the termination or lessening of business relationships with blacklisted firms or with Country Y [a boycotted country] (in the absence of compelling non-boycott considerations) or the refusal to enter into such business relationships where there are opportunities and compelling business reasons for doing so (apart from boycott considerations). On the other hand, repeated inclusion of such a provision in contracts does not give rise to such an inference.<sup>32</sup>

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<sup>30</sup> TRA Guidelines H-3, H-4, 43 Fed. Reg. 3462 (1978).

<sup>31</sup> TRA Guideline H-7, 43 Fed. Reg. 3463 (1978).

<sup>32</sup> TRA Guideline H-3, 43 Fed. Reg. 3463 (1978).

The Guidelines contain a number of examples dealing with the problems arising out of obtaining visas for employees and import and export certificates for goods. Clearly there is boycott participation if the agreement provides that no individuals of a particular nationality, race or religion will be hired.<sup>33</sup> However, even if the contract says nothing about the nationality, race or religion of individuals who are employed to carry out the contract within a boycotting country, the unilateral decision by the employer to exclude from employment individuals of a boycotted nationality, race or religion is likely to constitute an implied agreement to participate in a boycott.<sup>34</sup> However, if the employing company simply informs applicants for employment that if they cannot obtain a visa to enter the boycotting countries their employment will be terminated, or if their employment is subject to the condition that they obtain visas from the boycotting country, no agreement for boycott participation will be inferred since the company has not refrained from employing such individuals.<sup>35</sup> Moreover, it is permissible to specify that only local country nationals may be employed or that a percentage of the employees be local.<sup>36</sup>

Similarly, if a contract contains no language prohibiting dealing with blacklisted persons or entities, the fact that the company subcontracts with others to supply goods or services on a delivered-in-boycotting-country basis will not support the inference of an agreement to participate in boycott activities.<sup>37</sup> If the company had refrained from purchasing goods from blacklisted companies, however, "an overall course of conduct which includes such an absence of business relationships in addition to other factors could support such an inference" even though the contract with the boycotting country contained no boycott provision.<sup>38</sup>

The Treasury Guidelines address several approaches designed to provide the substance of boycott compliance without the formal use of blacklists. One method is for the boycotting country to name the

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<sup>33</sup> TRA Guidelines L-1, L-5, 43 Fed. Reg. 3467-68 (1978).

<sup>34</sup> TRA Guideline H-9 specifically states that such exclusion will not give rise to the inference of an agreement, "provided that there appear to be valid business reasons for such action. In the absence of valid business reasons, such an action could support the inference of an agreement . . . . It is highly unlikely here that there are valid business reasons for [such] . . . action." TRA Guideline H-9, 43 Fed. Reg. 3463 (1978).

<sup>35</sup> TRA Guidelines H-10, H-11, 43 Fed. Reg. 3463 (1978).

<sup>36</sup> TRA Guidelines L-2, L-3, 43 Fed. Reg. 3467-68 (1978).

<sup>37</sup> TRA Guidelines J-7, J-8, 43 Fed. Reg. 3467 (1978).

<sup>38</sup> TRA Guideline H-5, 43 Fed. Reg. 3463 (1978).

permissible suppliers of goods and services. This will cause a boycott participation agreement to be inferred because the contract "on its face indicates a pattern of exclusion of certain companies, including companies with which [the contractor] . . . has no particular reason not to do business."<sup>39</sup> A second technique is to give the prime contractor the right to select suppliers and subcontractors but give the boycotting country a veto over the selection. A variant of this is to reverse the roles and allow the boycotting country to make the selection but give the prime contractor a veto. In both cases there is no inference of an agreement from the face of the contract. "However, an overall course of conduct which includes the signing of a contract with such a provision in addition to other factors could give rise to such an inference."<sup>39.1</sup>

The Conference Committee Report stated that the signing (at the time of import) of a certification as to content, which is required to obtain an import license, does not, by itself, constitute an agreement to participate in boycott activity. The Treasury has interpreted this statement to allow both positive and negative certificates.<sup>40</sup> However, an agreement in advance to provide such certificates will constitute a boycott agreement.

In an evident attempt to harmonize the tax sanctions with the prohibitions of the Export Administration Act, the Treasury has now taken the position that banks have entered into boycott participation or cooperation agreements if they confirm, pay, honor, negotiate, open or otherwise implement a letter of credit calling for a certificate either that the beneficiary is not blacklisted or that the goods were not produced by a blacklisted company.<sup>41</sup> This position must be read in the context of the international boycott participation definition in section 999(b)(3) and thus would apply only if (i) the beneficiary of the letter of credit is either a United States person or boycotted person or (ii) the bank knew or had reason to know that it would not be able to obtain the required certificate because of the nationality, race or religion of the beneficiary's owners, management or directors.

As previously noted, the statute specifies that the agreement in question be required "as a condition of doing business." The Treas-

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<sup>39</sup> TRA Guideline H-14, 43 Fed. Reg. 3463-64 (1978).

<sup>39.1</sup> TRA Guidelines H-13, H-15, 43 Fed. Reg. 3463-64 (1978).

<sup>40</sup> TRA Guideline H-32, 43 Fed. Reg. 3465 (1978).

<sup>41</sup> TRA Guidelines H-29A, H-29B, 43 Fed. Reg. 3465 (1978). Note that merely advising the beneficiary of the letter of credit is not an agreement under section 999.

ury has broadened this requirement by holding that a blacklisted company, which agrees to refrain from doing business with a boycotted country as a condition of being removed from the list, has agreed "as a condition for being in a position to do business" with boycotting countries to refrain from doing business with the boycotted country and has concluded that this constitutes an agreement under section 999(b)(3).<sup>42</sup>

The business aggregation rules of section 999(b)(1) and (2) are of critical importance in connection with the "agreement" concept. The statute provides that if a person (or a member of a controlled group that includes the person) participates in or cooperates with an international boycott, the taxpayer (or the controlled group) will be presumed to have participated in or cooperated with the boycott with respect to all operations in all countries which require participation in or cooperation with the boycott as a condition of doing business. That presumption can be rebutted only for operations that (i) are clearly separate and identifiable from the boycott operations and (ii) with respect to which it can be clearly demonstrated that there was no participation in or cooperation with the boycott.

There is little guidance as to how the presumption is to be rebutted. Treasury Guideline D-3 lists a number of factors which may be considered: (i) whether different entities conducted the operations, (ii) whether the operations were supervised by different management personnel, (iii) whether the operations involved distinctly different products or services, (iv) whether the operations were undertaken pursuant to separate and distinct contracts, and (v) if the operations were not continuous over time, whether each transaction was separately negotiated and performed. The Guideline states that no relative weight is assigned to any specific factor and warns that even a positive answer to each of the listed factors "will not necessarily result in a determination that an operation is a clearly separate and identifiable operation if a contrary conclusion is warranted by the facts."

The Treasury has effectively removed the risk that a minor and unintentional agreement for boycott participation or cooperation will taint all of the business done by the controlled group in boycotting countries.<sup>43</sup> The conditions for this relief are that (i) the agreement was unintentional, that is, unknown at the time it was made,

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<sup>42</sup> TRA Guideline H-20, 43 Fed. Reg. 3464 (1978).

<sup>43</sup> TRA Guideline D-4, 43 Fed. Reg. 3459 (1978).

(ii) the company has not authorized the employee to enter into boycott agreements, and (iii) the company does not comply with the unauthorized boycott clause.

#### IV. TAX SANCTIONS

The three tax sanctions for boycott activity are the denial of the foreign tax credit, deferral and DISC benefits. The measure of loss of these benefits can be determined under either of two formulas, at the taxpayer's option. One method is to use the international boycott factor (IBF) and the second is "the specifically attributable taxes and income method" (SATIM). The Conference Committee Report indicates that the IBF was designed for use by those persons who cannot clearly separate boycott and non-boycott operations.<sup>44</sup> Whichever method is chosen, the taxpayer must apply that method to all boycott activities during the year.

##### A. *International Boycott Factor (IBF)*

The IBF is a fraction, the numerator of which is the sum of:

- (1) Purchases made from all boycotting countries associated in carrying out a particular international boycott,
- (2) Sales made to or from all boycotting countries associated in carrying out a particular international boycott, and
- (3) Payroll paid or accrued for services performed in all boycotting countries associated in carrying out a particular international boycott by that person during that person's taxable year,

minus the amount of such purchases, sales, and payroll that is clearly demonstrated to be attributable to clearly separate and identifiable operations in connection with which there was no participation in or cooperation with that international boycott.<sup>45</sup> The IBF denominator is the sum of:

- (1) Purchases made from any country other than the United States,
- (2) Sales made to or from any country other than the United States, and
- (3) Payroll paid or accrued for services performed in any country other than the United States by that person during that person's taxable year.

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<sup>44</sup> S. REP. NO. 1236, 94th Cong., 2d Sess. 468 (1976).

<sup>45</sup> Temp. Treas. Reg. § 7.999-1(c)(2) (1977). Operations carried out pursuant to contract described in section 1065 of the Tax Reform Act of 1976 are also excluded.



"Purchases made from a country" means "the gross amount paid in connection with the purchase of, the use of or the right to use: (i) tangible personal property (including money) from a stock of goods located in that country, (ii) intangible property (other than securities) in that country, (iii) securities by a dealer to a beneficial owner that is a resident of that country (but only if the dealer knows or has reason to know the country or residence of the beneficial owner), (iv) real property located in that country, or (v) services performed in, and the end product of services performed in, that country (other than payroll paid to a person that is an officer or employee of the payor)."<sup>46</sup>

"Sales made to a country" means "the gross receipts from the sale, exchange, other disposition, or use of: (i) tangible personal property (including money) for direct use, consumption or disposition in that country, (ii) services performed in that country, (iii) the end product of services (wherever performed) for direct use, consumption or disposition in that country, (iv) intangible property (other than securities) in that country, (v) securities by a dealer to a beneficial owner that is a resident of that country (but only if the dealer knows or has reason to know the country of residence of the beneficial owner), or (vi) real property located in that country."<sup>47</sup>

"Sales made from a country" means "the gross receipts from the sale, exchange, other disposition or use of: (i) tangible personal property (including money) from a stock of goods located in that country, (ii) intangible property (other than securities) in that country, or (iii) services performed in, and the end product of services performed in that country."<sup>48</sup>

These definitions of "purchases" and "sales" are much broader than might reasonably be expected. They include the use of or the right to use property, thus encompassing rentals and the borrowing of money. Purchases and sales are apparently counted on a cash basis, whereas payroll includes both the payroll paid and the payroll accrued. Many transactions will be counted twice. A company with branches in two boycotting countries will have every inter-branch transaction classified as both a purchase from a boycotting country and a sale to a boycotting country. Such a transaction would also have been a sale from a boycotting country, but the Regulations

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<sup>46</sup> Temp. Treas. Reg. § 7.999-1(b)(5) (1977).

<sup>47</sup> Temp. Treas. Reg. § 7.999-1(b)(6) (1977).

<sup>48</sup> Temp. Treas. Reg. § 7.999-1(b)(7) (1977).

provide that a transaction that is a sale "to" a country is not also counted as a sale "from" a country in computing the numerator of the IBF.<sup>49</sup> There is no similar restriction with respect to computing the denominator, however. Thus, such inter-branch transactions tend to reduce the IBF.

The IBF of a controlled group is calculated in the same way, except that the purchases from, sales to and from, and payroll of each group member (for that member's own taxable year that ends with or within the controlled group's taxable year that ends with or within that member's taxable year) are combined.<sup>50</sup> Thus, transactions between controlled group members may be counted four times in computing the IBF. The group IBF must be used by each group member that chooses to determine its loss of tax benefits by the IBF.<sup>51</sup> Those controlled group members who are part of the group's consolidated income tax return must all use the IBF method or all use the specifically attributable taxes and income method of computing the loss of tax benefits.

The smaller the IBF, the smaller the amount of tax benefits lost. Thus, there is an opportunity for planning transactions so as to reduce the impact of the tax sanctions. For example, if funds are borrowed in the United States for use in a boycotting country, these funds appear to count in the numerator (a "sale to" a boycotting country), but not in the denominator (a "purchase from the United States"). If the funds have been borrowed outside the United States, they would still count in the numerator, but they would also count in the denominator.

#### B. *Specifically Attributable Taxes and Income Method (SATIM)*

The other method of computing the loss of tax benefits is referred to as "the specifically attributable taxes and income method" as it requires the taxpayer to clearly demonstrate the foreign taxes paid and income earned for the taxable year which are attributable to specific boycott operations.<sup>52</sup> The tax benefits denied are those spe-

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<sup>49</sup> *Id.*

<sup>50</sup> Temp. Treas. Reg. § 7.999-1(c)(3). Currently, these regulations provide that the IBF of a controlled group reflects the operations of all members of the controlled group, regardless of whether all members of the group choose to compute their loss of tax benefits using the IBF. According to TRA Guideline F-2, 43 Fed. Reg. 3461 (1978), the Treasury anticipates that these regulations will be changed to provide that the IBF of controlled groups will reflect the operations of only those members of the controlled group that choose to compute their loss of tax benefits using the IBF.

<sup>51</sup> TRA Guideline F-5, 43 Fed. Reg. 3462 (1978).

<sup>52</sup> I.R.C. § 999(c)(2).

cifically attributable to the operations in which there was boycott participation or cooperation. The single Guideline that refers to the SATIM computation provides only that the taxpayer must clearly demonstrate the foreign taxes paid and income earned attributable to specific operations "by analysing the profit and loss data of each separate and identifiable operation."<sup>53</sup> Guideline D-3, as mentioned above, provides what little guidance there is in determining what are separate and identifiable operations. There is no further amplification of the analysis requirement other than the statement that the principles of section 1.861-8 of the Treasury Regulations are applicable in determining income and taxes attributable to specific operations.

The SATIM can be used even where the taxpayer cannot specifically identify taxes and income with respect to every separate and identifiable operation. However, the tax benefits attributable to all operations in boycotting countries for which it cannot specifically attribute taxes and income must be forfeited.<sup>54</sup>

### C. *Foreign Tax Credit*

The foreign tax credit sanction<sup>55</sup> operates by disallowing the foreign tax credit for the foreign taxes attributable to the participation in or cooperation with an international boycott. The effect of this disallowance depends on whether the foreign taxes were paid by the taxpayer, and thus would have been creditable under section 901, or were "deemed paid" by the taxpayer and would have been creditable under section 902. The direct foreign taxes denied creditability by reason of section 908 are deductible, but the deemed paid foreign taxes which are disallowed as credits are not deductible.<sup>56</sup> Section 908 provides that section 275(a)(4) (prohibiting the deductibility of foreign taxes by a taxpayer choosing the benefits of section 901) and section 78 (providing for the gross up of dividends from foreign corporations for determination of the amount of foreign tax credit under sections 902 and 960) do not apply to any amount of taxes denied credit under section 908. Therefore, the foreign taxes paid by the taxpayer and denied creditability are freed from these prohibitions against deductibility. Since section 902 taxes are not otherwise

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<sup>53</sup> TRA Guideline F-6, 43 Fed. Reg. 3462 (1978).

<sup>54</sup> TRA Guideline F-8, 43 Fed. Reg. 3462 (1978).

<sup>55</sup> I.R.C. § 908.

<sup>56</sup> TRA Guideline N-4, 43 Fed. Reg. 3469 (1978).

deductible under the Code, no deduction is available for the disallowed section 902 taxes.

If the taxpayer has both direct and deemed paid foreign taxes and is denied some foreign tax credit under section 908, the allocation of the credit loss between these two types of taxes is done on a proportional basis. The ratio of the direct taxes (before the application of section 908) to the total direct and deemed paid taxes (before the application of section 908) determines the amount of the lost foreign tax credits which are attributable to the direct foreign taxes.<sup>57</sup> The determination of the amount of foreign taxes denied creditability is complex<sup>58</sup> and is substantially affected by whether the taxpayer uses the IBF or the SATIM computation, or has no boycott activity in the current year.

#### D. *Application of the IBF*

The IBF is applied to the foreign tax credits *after* the application of the limitations of sections 904 and 907. In other words, the IBF is applied to the creditable foreign taxes, not to the total foreign taxes.

How does this affect the carryover and carryback of foreign taxes pursuant to sections 904(c) and 907(f)? The answers turn on whether the taxpayer had boycott operations in the year from which the taxes are carried. If the foreign taxes are carried from a year in which the taxpayer applied the IBF, the amount of these taxes that will be disallowed as a credit in the current year is determined by the taxpayer's IBF for the year from which the foreign taxes were carried. If the foreign taxes are carried from a year in which the taxpayer either did not participate in or cooperate with an interna-

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<sup>57</sup> TRA Guideline N-5, 43 Fed. Reg. 3469-70 (1978).

<sup>58</sup> See TRA Guidelines N-1A, N-1B, 43 Fed. Reg. 3468-69 (1978). The discussion in the text relates to foreign taxes on operations and not to withholding taxes on the payment of dividends and interest. With respect to withholding taxes, it is immaterial whether the payor participated in or cooperated with an international boycott. The relevant questions are whether the recipient had boycott participation or cooperation and, if so, can it clearly demonstrate that its investment in the foreign company is a clearly separate and identifiable operation in connection with which the recipient did not participate in or cooperate with an international boycott. If the answer to the first is negative, or both questions can be answered affirmatively, then section 908 will not affect the creditability of the withholding tax under section 901. On the other hand, if the taxpayer had boycott activity and the investment is not clearly separate and identifiable from its boycott activity, then section 908 will apply. If the taxpayer uses the IBF, it will be applied to the withholding tax to calculate the disallowance. If the taxpayer uses the SATIM, the entire amount of the withholding tax will be disallowed because the entire tax is attributable to boycott operations.

tional boycott or applied the SATIM, there is no disallowance in the current year under section 908 for foreign tax credits attributable to foreign taxes deemed paid in the current year under sections 904(c) and 907(f).<sup>59</sup>

Since the disallowed credits are deductible to the extent of the direct foreign taxes, that deduction will reduce taxable income, and logically a recomputation of the general foreign tax credit limitation would be required. However, the Treasury has taken the position that there is no adjustment to be made under sections 901, 904 or 908 to reflect the deduction for disallowed credits.<sup>60</sup> Thus, the allowable foreign tax credits for the current year would equal the foreign tax credits available (after applying sections 904 and 907 without regard to section 908) less the foreign tax credits disallowed under section 908.

#### E. *Application of the SATIM*

A two step computation is required in applying this method. First, the taxpayer determines the amount of all foreign taxes paid,<sup>61</sup> other than those deemed paid in the current year under sections 904(c) and 907(f) that are carried from a year in which the taxpayer applied the IBF. That amount is then reduced by the sum of (i) those foreign taxes that are attributable to specific operations which are related to boycotting countries and in connection with which there was boycott participation or cooperation, and (ii) those foreign taxes which are attributable to specific operations that are in boycotting countries and have not been clearly demonstrated to be separate and identifiable from operations in connection with which

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<sup>59</sup> The difference in treatment between taxes carried from a year in which the IBF was used and from a year in which the SATIM was used is not accidental. Since, in a year in which the taxpayer used the SATIM, the reduction in foreign taxes is made before the determination of the section 904 limitation, no "tainted" foreign taxes will be available for carrying forward to another year. Thus, there will be no reduction in foreign taxes and no disallowance of credits in another year for taxes carried from a year in which the taxpayer used the SATIM.

<sup>60</sup> TRA Guideline N-2, 43 Fed. Reg. 3469 (1978).

<sup>61</sup> With respect to the deemed paid foreign taxes resulting under section 902 from a foreign corporation's dividend, the recipient must apply the SATIM to the payor's operations, not the investment. Therefore, the recipient can credit only those foreign taxes paid by the payor corporation that the recipient can demonstrate are attributable to the payor's operations which meet one of three tests: (i) operations not in or related to a boycotting country; (ii) operations related to a boycotting country and in connection with which there was no participation in or cooperation with an international boycott; or (iii) operations in a boycotting country and which have been clearly demonstrated to be separate and identifiable from operations in connection with which there was participation in or cooperation with an international boycott.

there was boycott participation or cooperation. After the amount of the reduction of foreign taxes has been determined, the taxpayer then computes its section 904 limitation, which will reflect a reduction (for the entire amount of the disallowed foreign taxes that are deducted) in both taxable income from sources without the United States and in the total taxable income.

Second, the amount of any otherwise creditable foreign taxes deemed paid in the current year under sections 904(c) and 907(f) that are carried from a year in which the taxpayer applied the IBF is multiplied by the IBF for the year from which the taxes were carried. Current foreign tax credit in this amount is also disallowed. However, no adjustment is made at this point under sections 901, 904 or 908 to reflect any deduction that may be allowed for the disallowed credits attributable to foreign taxes carried from a year in which the taxpayer applied the IBF.

#### *F. No Current Boycott Activity*

Where the taxpayer has no current boycott operations, there is no disallowance of current foreign tax credits. However, the carryover and carryback provisions of sections 904 and 907 may cause foreign taxes actually paid in a year of boycott activity to be deemed paid in a non-boycott year. If the year from which the taxes were first carried was one in which the taxpayer used the SATIM, no further disallowance will occur because no "tainted" taxes will be in the carryover amount. If, on the other hand, the taxpayer used the IBF in the year from which the taxes were first carried, there will be a current disallowance (after applying the limitations of sections 904 and 907) of foreign tax credits attributable to the carried over foreign taxes in an amount equal to the product of those credits multiplied by the taxpayer's IBF for that year.

#### *G. Deferral*

The sanction with respect to deferral operates by treating a controlled foreign corporation's income which is attributable to participation in or cooperation with an international boycott as Subpart F income.<sup>62</sup> The amount of such Subpart F income is determined either by the SATIM or by multiplying that part of the controlled foreign corporation's income not otherwise treated as a deemed dividend to United States shareholders under section 951 by the IBF.

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<sup>62</sup> I.R.C. § 952(a)(3).

The section 960 foreign tax credits accompanying the foreign corporation's income included in the income of the United States shareholders will be lost pursuant to section 908.

#### H. DISC

A DISC shareholder is deemed to have received a distribution of the income attributable to participation in or cooperation with an international boycott. Unfortunately, this provision is somewhat ambiguous for section 995(b)(1)(F)(ii) provides that the amount of the distribution is determined either by the SATIM or by multiplying the amount of the section 995(b)(1)(F)(i) deemed dividend by the IBF. If the SATIM is used, section 999(c)(2) provides that the amount of the deemed distribution is "the amount specifically attributable" to boycott operations. However, one-half of this amount is already a deemed distribution under the general rule of section 995(b)(1)(F)(i). Thus, if the SATIM is used, it could cause a disproportionate deemed dividend.

#### V. REPORTS

The international boycott report form is to be filed in duplicate, one copy with the income tax return and one copy with the Service Center in Philadelphia.<sup>63</sup> While the time period covered by the Form 5713 is relatively simple to determine in the case of individuals, partnerships and unaffiliated corporations, it is much more complex in the case of affiliated or controlled groups in which the members have different taxable years. Where the controlled group has a common parent, that parent's tax year is the relevant period covered by the Form 5713. Where there is no common parent, all the members of the controlled group can consent, in writing, to a common tax year. The sole function of this new common tax year is to establish a boycotting reporting period and it does not change the income tax years of the various members.<sup>64</sup> If no agreement can be reached by the members of the controlled group as to the common tax year of the group, it will be the tax year of the member of the controlled group whose tax year ends in the latest month of the calendar year.

The Form 5713 filed by a member of a controlled group reflects

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<sup>63</sup> Presumably if the taxpayer is not required to file a United States income tax return, there is no mechanism for filing the boycott report form. However, the Treasury may well take the position that the copy that is to be filed with the Service Center in Philadelphia is still required.

<sup>64</sup> See TRA Guideline A-13, 43 Fed. Reg. 3455-56 (1978).

(i) the reporter's operations, boycott requests and participation for its taxable year that ends with or within the new common tax year that ends with or within the reporter's taxable year, (ii) the operations, boycott requests and participation of each other member of the controlled group for each other member's taxable year that ends with or within the new common tax year that ends with or within the reporting company's taxable year, (iii) the operations, boycott requests and participation of each foreign corporation or partnership on whose behalf the reporting company reports as a United States shareholder or as a partner, for the taxable year of the foreign corporation or the partnership that ends with or within the reporter's taxable year that ends with or within the new common tax year that ends with or within the reporter's taxable year, and (iv) the operations, boycott requests and participation of each foreign corporation or partnership on whose behalf a member (other than the reporter) of the controlled group is reporting as a United States shareholder or as a partner, for the taxable year of the foreign corporation or the partnership that ends with or within such other member's taxable year that ends with or within the new common tax year that ends with or within the reporter's taxable year.

The net effect of these reporting requirements is that the operations, boycott requests, and boycott participation shown on the Form 5713 will be identical for each member of the controlled group and need only be updated on a group basis once a year. The information is revised at the close of the new common tax year and is reported by each member of the group for its taxable year that ends with or after the new common tax year. Only if the taxable years of all members, foreign corporations and partnerships coincide with the new common tax year, will all information be reported on a current basis by every member. If all taxable years do not coincide, then some or all of the information reported will reflect a time period that is out of phase with the reporter's taxable year. For example, assume that domestic corporations A, B, C, D and E are all members of a controlled group. Corporation A is the common parent, corporation D is a DISC, corporation E is an insurance company and corporation A files a consolidated income tax return for it and corporations B and C. Corporations A, B, C and E report on the basis of a calendar year. Corporation D reports on the basis of a June 30 fiscal year. Corporation C owns 15% of foreign corporation X, which reports on the basis of a March 31 fiscal year. All the companies have operations in boycotting countries. The Forms 5713 filed by each of corporations A, B, and C for the 1978 taxable year



will reflect the operations of corporations A, B, C, and E for the 1978 calendar year, the operations of corporation D for the period July 1, 1977-June 30, 1978, and the operations of corporation X for the period April 1, 1977-March 31, 1978. The Form 5713 filed by corporation E for its taxable year ended December 31, 1978 will be identical to that filed by corporation A for the taxable year ended December 31, 1978. The Form 5713 filed by corporation D for its taxable year ended June 30, 1979 will also be identical to that filed by corporation A for the taxable year ending December 31, 1978. Thus, the Form 5713 filed by corporation D for its taxable year ending June 30, 1979, will not reflect any of corporation D's operations for its July 1, 1978-June 30, 1979 taxable year. No report will be required of corporation X unless it claims the foreign tax credit or owns stock of a DISC.

## VI. CONCLUSION

There are many technical issues that have not yet been considered by the Treasury, such as the transition treatment of companies that enter or leave a controlled group. The potential for litigation is great and definitive answers are likely to be years away. Even if, as many expect, DISC is repealed and deferral is discarded, the boycott sanctions will still be important as the loss of foreign tax credit can significantly increase the cost of operations.

More important than the technical issues, however, is the basic policy question of whether the boycott issue should be imbedded in the tax law. The administrative costs, both to the Treasury and to business of adequately carrying out the congressional mandate, seem clearly disproportionate to the benefits obtained in view of the comprehensive boycott sanctions contained in the Export Administration Act. That certain activities are permissible under the Internal Revenue Code but not under the Export Administration Act, and vice versa, bespeaks of a fuzzy and uncertain policy with respect to boycott operations and contributes little more than "traps for the unwary." Unfortunately, the outlook for the repeal of section 999 is dim for it takes rare courage to propose the scrapping of a bad law that was supposed to serve a good purpose.

