

Pub. L. 98-369, set out as a note under section 1271 of this title.

§ 1288. Treatment of original issue discount on tax-exempt obligations

(a) General rule

Original issue discount on any tax-exempt obligation shall be treated as accruing—

(1) for purposes of section 163, in the manner provided by section 1272(a) (determined without regard to paragraph (7) thereof), and

(2) for purposes of determining the adjusted basis of the holder, in the manner provided by section 1272(a) (determined with regard to paragraph (7) thereof).

(b) Definitions and special rules

For purposes of this section—

(1) Original issue discount

The term “original issue discount” has the meaning given to such term by section 1273(a) without regard to paragraph (3) thereof. In applying section 483 or 1274, under regulations prescribed by the Secretary, appropriate adjustments shall be made to the applicable Federal rate to take into account the tax exemption for interest on the obligation.

(2) Tax-exempt obligation

The term “tax-exempt obligation” has the meaning given to such term by section 1275(a)(3).

(3) Short-term obligations

In applying this section to obligations with maturity of 1 year or less, rules similar to the rules of section 1283(b) shall apply.

(Added Pub. L. 98-369, div. A, title I, §41(a), July 18, 1984, 98 Stat. 553; amended Pub. L. 100-647, title I, §1006(u)(3), Nov. 10, 1988, 102 Stat. 3427.)

Editorial Notes

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-647 substituted “paragraph (7)” for “paragraph (6)” in pars. (1) and (2).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and applicable to obligations issued after Sept. 3, 1982, and acquired after Mar. 1, 1984, see section 44 of Pub. L. 98-369, set out as a note under section 1271 of this title.

PART VI—TREATMENT OF CERTAIN PASSIVE FOREIGN INVESTMENT COMPANIES

Subpart

- A. Interest on tax deferral.
- B. Treatment of qualified electing funds.
- C. Election of mark to market for marketable stock.
- D. General provisions.

Editorial Notes

AMENDMENTS

1997—Pub. L. 105-34, title XI, §1122(d)(6), Aug. 5, 1997, 111 Stat. 977, added items for subparts C and D and struck out former item for subpart C “General provisions”.

SUBPART A—INTEREST ON TAX DEFERRAL

Sec.

1291. Interest on tax deferral.

§ 1291. Interest on tax deferral

(a) Treatment of distributions and stock dispositions

(1) Distributions

If a United States person receives an excess distribution in respect of stock in a passive foreign investment company, then—

(A) the amount of the excess distribution shall be allocated ratably to each day in the taxpayer's holding period for the stock,

(B) with respect to such excess distribution, the taxpayer's gross income for the current year shall include (as ordinary income) only the amounts allocated under subparagraph (A) to—

(i) the current year, or

(ii) any period in the taxpayer's holding period before the 1st day of the 1st taxable year of the company which begins after December 31, 1986, and for which it was a passive foreign investment company, and

(C) the tax imposed by this chapter for the current year shall be increased by the deferred tax amount (determined under subsection (c)).

(2) Dispositions

If the taxpayer disposes of stock in a passive foreign investment company, then the rules of paragraph (1) shall apply to any gain recognized on such disposition in the same manner as if such gain were an excess distribution.

(3) Definitions

For purposes of this section—

(A) Holding period

The taxpayer's holding period shall be determined under section 1223; except that—

(i) for purposes of applying this section to an excess distribution, such holding period shall be treated as ending on the date of such distribution, and

(ii) if section 1296 applied to such stock with respect to the taxpayer for any prior taxable year, such holding period shall be treated as beginning on the first day of the first taxable year beginning after the last taxable year for which section 1296 so applied.

(B) Current year

The term “current year” means the taxable year in which the excess distribution or disposition occurs.

(b) Excess distribution

(1) In general

For purposes of this section, the term “excess distribution” means any distribution in

respect of stock received during any taxable year to the extent such distribution does not exceed its ratable portion of the total excess distribution (if any) for such taxable year.

(2) Total excess distribution

For purposes of this subsection—

(A) In general

The term “total excess distribution” means the excess (if any) of—

- (i) the amount of the distributions in respect of the stock received by the taxpayer during the taxable year, over
- (ii) 125 percent of the average amount received in respect of such stock by the taxpayer during the 3 preceding taxable years (or, if shorter, the portion of the taxpayer’s holding period before the taxable year).

For purposes of clause (ii), any excess distribution received during such 3-year period shall be taken into account only to the extent it was included in gross income under subsection (a)(1)(B).

(B) No excess for 1st year

The total excess distributions with respect to any stock shall be zero for the taxable year in which the taxpayer’s holding period in such stock begins.

(3) Adjustments

Under regulations prescribed by the Secretary—

(A) determinations under this subsection shall be made on a share-by-share basis, except that shares with the same holding period may be aggregated,

(B) proper adjustments shall be made for stock splits and stock dividends,

(C) if the taxpayer does not hold the stock during the entire taxable year, distributions received during such year shall be annualized,

(D) if the taxpayer’s holding period includes periods during which the stock was held by another person, distributions received by such other person shall be taken into account as if received by the taxpayer,

(E) if the distributions are received in a foreign currency, determinations under this subsection shall be made in such currency and the amount of any excess distribution determined in such currency shall be translated into dollars,

(F) proper adjustment shall be made for amounts not includible in gross income by reason of section 959(a) or 1293(c), and

(G) if a charitable deduction was allowable under section 642(c) to a trust for any distribution of its income, proper adjustments shall be made for the deduction so allowable to the extent allocable to distributions or gain in respect of stock in a passive foreign investment company.

(c) Deferred tax amount

For purposes of this section—

(1) In general

The term “deferred tax amount” means, with respect to any distribution or disposition

to which subsection (a) applies, an amount equal to the sum of—

(A) the aggregate increases in taxes described in paragraph (2), plus

(B) the aggregate amount of interest (determined in the manner provided under paragraph (3)) on such increases in tax.

Any increase in the tax imposed by this chapter for the current year under subsection (a) to the extent attributable to the amount referred to in subparagraph (B) shall be treated as interest paid under section 6601 on the due date for the current year.

(2) Aggregate increases in taxes

For purposes of paragraph (1)(A), the aggregate increases in taxes shall be determined by multiplying each amount allocated under subsection (a)(1)(A) to any taxable year (other than any taxable year referred to in subsection (a)(1)(B)) by the highest rate of tax in effect for such taxable year under section 1 or 11, whichever applies.

(3) Computation of interest

(A) In general

The amount of interest referred to in paragraph (1)(B) on any increase determined under paragraph (2) for any taxable year shall be determined for the period—

- (i) beginning on the due date for such taxable year, and
- (ii) ending on the due date for the taxable year with or within which the distribution or disposition occurs,

by using the rates and method applicable under section 6621 for underpayments of tax for such period.

(B) Due date

For purposes of this subsection, the term “due date” means the date prescribed by law (determined without regard to extensions) for filing the return of the tax imposed by this chapter for the taxable year.

(d) Coordination with subparts B and C

(1) In general

This section shall not apply with respect to any distribution paid by a passive foreign investment company, or any disposition of stock in a passive foreign investment company, if such company is a qualified electing fund with respect to the taxpayer for each of its taxable years—

(A) which begins after December 31, 1986, and for which such company is a passive foreign investment company, and

(B) which includes any portion of the taxpayer’s holding period.

Except as provided in section 1296(j), this section also shall not apply if an election under section 1296(k) is in effect for the taxpayer’s taxable year. In the case of stock which is marked to market under section 475 or any other provision of this chapter, this section shall not apply, except that rules similar to the rules of section 1296(j) shall apply.

(2) Election to recognize gain where company becomes qualified electing fund

(A) In general

If—

(i) a passive foreign investment company becomes a qualified electing fund with respect to the taxpayer for a taxable year which begins after December 31, 1986,

(ii) the taxpayer holds stock in such company on the first day of such taxable year, and

(iii) the taxpayer establishes to the satisfaction of the Secretary the fair market value of such stock on such first day,

the taxpayer may elect to recognize gain as if he sold such stock on such first day for such fair market value.

(B) Additional election for shareholder of controlled foreign corporations

(i) In general

If—

(I) a passive foreign investment company becomes a qualified electing fund with respect to the taxpayer for a taxable year which begins after December 31, 1986,

(II) the taxpayer holds stock in such company on the first day of such taxable year, and

(III) such company is a controlled foreign corporation (as defined in section 957(a)),

the taxpayer may elect to include in gross income as a dividend received on such first day an amount equal to the portion of the post-1986 earnings and profits of such company attributable (under regulations prescribed by the Secretary) to the stock in such company held by the taxpayer on such first day. The amount treated as a dividend under the preceding sentence shall be treated as an excess distribution and shall be allocated under subsection (a)(1)(A) only to days during periods taken into account in determining the post-1986 earnings and profits so attributable.

(ii) Post-1986 earnings and profits

For purposes of clause (i), the term “post-1986 earnings and profits” means earnings and profits which were accumulated in taxable years of such company beginning after December 31, 1986, and during the period or periods the stock was held by the taxpayer while the company was a passive foreign investment company.

(iii) Coordination with section 959(e)

For purposes of section 959(e), any amount included in gross income under this subparagraph shall be treated as included in gross income under section 1248(a).

(C) Adjustments

In the case of any stock to which subparagraph (A) or (B) applies—

(i) the adjusted basis of such stock shall be increased by the gain recognized under subparagraph (A) or the amount treated as a dividend under subparagraph (B), as the case may be, and

(ii) the taxpayer's holding period in such stock shall be treated as beginning on the first day referred to in such subparagraph.

(e) Certain basis, etc., rules made applicable

Except to the extent inconsistent with the regulations prescribed under subsection (f), rules similar to the rules of subsections (c), (d), and (e) of section 1246 (as in effect on the day before the date of the enactment of the American Jobs Creation Act of 2004) shall apply for purposes of this section; except that—

(1) the reduction under subsection (e) of such section shall be the excess of the basis determined under section 1014 over the adjusted basis of the stock immediately before the decedent's death, and

(2) such a reduction shall not apply in the case of a decedent who was a nonresident alien at all times during his holding period in the stock.

(f) Recognition of gain

To the extent provided in regulations, in the case of any transfer of stock in a passive foreign investment company where (but for this subsection) there is not full recognition of gain, the excess (if any) of—

- (1) the fair market value of such stock, over
- (2) its adjusted basis,

shall be treated as gain from the sale or exchange of such stock and shall be recognized notwithstanding any provision of law. Proper adjustment shall be made to the basis of any such stock for gain recognized under the preceding sentence.

(g) Coordination with foreign tax credit rules

(1) In general

If there are creditable foreign taxes with respect to any distribution in respect of stock in a passive foreign investment company—

(A) the amount of such distribution shall be determined for purposes of this section with regard to section 78,

(B) the excess distribution taxes shall be allocated ratably to each day in the taxpayer's holding period for the stock, and

(C) to the extent—

(i) that such excess distribution taxes are allocated to a taxable year referred to in subsection (a)(1)(B), such taxes shall be taken into account under section 901 for the current year, and

(ii) that such excess distribution taxes are allocated to any other taxable year, such taxes shall reduce (subject to the principles of section 904(d) and not below zero) the increase in tax determined under subsection (c)(2) for such taxable year by reason of such distribution (but such taxes shall not be taken into account under section 901).

(2) Definitions

For purposes of this subsection—

(A) Creditable foreign taxes

The term “creditable foreign taxes” means, with respect to any distribution, any withholding tax imposed with respect to such distribution, but only if the taxpayer chooses the benefits of section 901 and such taxes are creditable under section 901 (determined without regard to paragraph (1)(C)(ii)).

(B) Excess distribution taxes

The term “excess distribution taxes” means, with respect to any distribution, the portion of the creditable foreign taxes with respect to such distribution which is attributable (on a pro rata basis) to the portion of such distribution which is an excess distribution.

(C) Section 1248 gain

The rules of this subsection also shall apply in the case of any gain which but for this section would be includible in gross income as a dividend under section 1248.

(Added Pub. L. 99-514, title XII, §1235(a), Oct. 22, 1986, 100 Stat. 2566; amended Pub. L. 100-647, title I, §1012(p)(1), (3), (6), (7), (9), (12)–(14), (28), (31), (33), title VI, §6127(b), Nov. 10, 1988, 102 Stat. 3515–3517, 3520, 3521, 3715; Pub. L. 105-34, title XI, §1122(b), Aug. 5, 1997, 111 Stat. 976; Pub. L. 105-206, title VI, §6011(c)(2), July 22, 1998, 112 Stat. 818; Pub. L. 107-16, title V, §542(e)(5)(B), June 7, 2001, 115 Stat. 85; Pub. L. 108-357, title IV, §413(c)(24), Oct. 22, 2004, 118 Stat. 1509; Pub. L. 111-147, title V, §521(b), Mar. 18, 2010, 124 Stat. 112; Pub. L. 111-312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300; Pub. L. 115-97, title I, §14301(c)(34), Dec. 22, 2017, 131 Stat. 2224; Pub. L. 115-141, div. U, title IV, §401(a)(183), Mar. 23, 2018, 132 Stat. 1193.)

Editorial Notes**REFERENCES IN TEXT**

The date of the enactment of the American Jobs Creation Act of 2004, referred to in subsec. (e), is the date of enactment of Pub. L. 108-357, which was approved Oct. 22, 2004.

AMENDMENTS

2018—Subsec. (e). Pub. L. 115-141 substituted “subsections (c), (d), and (e)” for “subsections (c) and (d) (e),” in introductory provisions.

2017—Subsec. (g)(2)(A). Pub. L. 115-97 substituted “any distribution, any withholding tax imposed with respect to such distribution, but only if” for “any distribution—

“(i) any foreign taxes deemed paid under section 902 with respect to such distribution, and

“(ii) any withholding tax imposed with respect to such distribution, but only if”.

2010—Subsec. (e). Pub. L. 111-312, which directed that subsec. (e) be amended to read as if amendment by Pub. L. 107-16, §542(e)(5)(B), had never been enacted, was executed by inserting “(e),” after “subsections (c) and (d)” and substituting “; except that—” and pars. (1) and (2) for the period at end. See 2001 Amendment note below.

Pub. L. 111-147 substituted “and (d)” for “(d), and (f)”.

2004—Subsec. (b)(3)(F). Pub. L. 108-357, §413(c)(24)(A), substituted “959(a)” for “551(d), 959(a),”.

Subsec. (e). Pub. L. 108-357, §413(c)(24)(B), inserted “(as in effect on the day before the date of the enactment of the American Jobs Creation Act of 2004)” after “section 1246” in introductory provisions.

2001—Subsec. (e). Pub. L. 107-16, §542(e)(5)(B), struck out “(e),” after “subsections (c), (d),” and substituted period at end for “; except that—

“(1) the reduction under subsection (e) of such section shall be the excess of the basis determined under section 1014 over the adjusted basis of the stock immediately before the decedent’s death, and

“(2) such a reduction shall not apply in the case of a decedent who was a nonresident alien at all times during his holding period in the stock.”

1998—Subsec. (d)(1). Pub. L. 105-206 inserted at end “In the case of stock which is marked to market under section 475 or any other provision of this chapter, this section shall not apply, except that rules similar to the rules of section 1296(j) shall apply.”

1997—Subsec. (a)(3)(A). Pub. L. 105-34, §1122(b)(3), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: “The taxpayer’s holding period shall be determined under section 1223; except that, for purposes of applying this section to an excess distribution, such holding period shall be treated as ending on the date of such distribution.”

Subsec. (d). Pub. L. 105-34, §1122(b)(2), substituted “subparts B and C” for “subpart B” in heading.

Subsec. (d)(1). Pub. L. 105-34, §1122(b)(1), inserted concluding provisions.

1988—Subsec. (a)(1)(B)(ii). Pub. L. 100-647, §1012(p)(12), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “any period in the taxpayer’s holding period before the 1st day of the 1st taxable year of the company for which it was a passive foreign investment company (or, if later, January 1, 1987), and”.

Subsec. (a)(3)(A). Pub. L. 100-647, §1012(p)(14), substituted “for purposes of applying this section to” for “in the case of”.

Subsec. (a)(4), (5). Pub. L. 100-647, §1012(p)(7)(A), struck out par. (4) which related to coordination with section 904, and par. (5) which related to section 902 not applying.

Subsec. (b)(2)(A). Pub. L. 100-647, §1012(p)(13), inserted at end “For purposes of clause (ii), any excess distribution received during such 3-year period shall be taken into account only to the extent it was included in gross income under subsection (a)(1)(B).”

Subsec. (b)(3)(F). Pub. L. 100-647, §1012(p)(3), added subpar. (F).

Subsec. (b)(3)(G). Pub. L. 100-647, §1012(p)(33), added subpar. (G).

Subsec. (c)(1). Pub. L. 100-647, §1012(p)(31), inserted at end “Any increase in the tax imposed by this chapter for the current year under subsection (a) to the extent attributable to the amount referred to in subparagraph (B) shall be treated as interest paid under section 6601 on the due date for the current year.”

Subsec. (d)(1). Pub. L. 100-647, §6127(b)(1), inserted “with respect to the taxpayer” after “qualified electing fund”.

Pub. L. 100-647, §1012(p)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “This section shall not apply with respect to—

“(A) any distribution paid by a passive foreign investment company during a taxable year for which such company is a qualified electing fund, and

“(B) any disposition of stock in a passive foreign investment company if such company is a qualified electing fund for each of its taxable years—

“(i) which begins after December 31, 1986, and for which such company is a passive foreign investment company, and

“(ii) which includes any portion of the taxpayer’s holding period.”

Subsec. (d)(2)(A)(i). Pub. L. 100-647, §6127(b)(2), inserted “with respect to the taxpayer” after “qualified electing fund”.

Subsec. (d)(2)(B). Pub. L. 100-647, §1012(p)(28), added subpar. (B) and struck out former subpar. (B) which related to adjustments to basis of stock to which subpar. (A) applies.

Subsec. (d)(2)(B)(i)(I). Pub. L. 100-647, §6127(b)(2), inserted “with respect to the taxpayer” after “qualified electing fund”.

Subsec. (d)(2)(C). Pub. L. 100-647, §1012(p)(28), added subpar. (C).

Subsec. (e). Pub. L. 100-647, §1012(p)(6)(B), substituted “Except to the extent inconsistent with the regulations prescribed under subsection (f), rules similar”.

Subsec. (e)(2). Pub. L. 100-647, §1012(p)(9), struck out “not” before “a nonresident”.

Subsec. (f). Pub. L. 100-647, §1012(p)(6)(A), amended subsec. (f) generally. Prior to amendment, subsec. (f),

“Nonrecognition provisions”, read as follows: “To the extent provided in regulations, gain shall be recognized on any disposition of stock in a passive foreign investment company.”

Subsec. (g). Pub. L. 100-647, §1012(p)(7)(B), added subsec. (g).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to taxable years of foreign corporations beginning after Dec. 31, 2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14301(d) of Pub. L. 115-97, set out as a note under section 78 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-312 applicable to estates of decedents dying, and transfers made after Dec. 31, 2009, except as otherwise provided, see section 301(e) of Pub. L. 111-312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

Pub. L. 111-147, title V, §521(c), Mar. 18, 2010, 124 Stat. 112, provided that: “The amendments made by this section [amending this section and section 1298 of this title] take effect on the date of the enactment of this Act [Mar. 18, 2010].”

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107-16, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105-34, set out as a note under section 532 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(p)(1), (3), (6), (7), (9), (12)–(14), (28), (31), (33) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by section 6127(b) of Pub. L. 100-647 effective as if included in the amendments made by section 1235 of Pub. L. 99-514, see section 6127(c)(1) of Pub. L. 100-647, set out as a note under section 1295 of this title.

EFFECTIVE DATE

Pub. L. 99-514, title XII, §1235(h), Oct. 22, 1986, 100 Stat. 2576, provided that: “The amendments made by this section [enacting this section and sections 1293 to 1297 of this title and amending sections 532, 542, 551, 851,

904, 951, 1246, and 6503 of this title] shall apply to taxable years of foreign corporations beginning after December 31, 1986.”

SUBPART B—TREATMENT OF QUALIFIED ELECTING FUNDS

Sec.

1293. Current taxation of income from qualified electing funds.

1294. Election to extend time for payment of tax on undistributed earnings.

1295. Qualified electing fund.

§ 1293. Current taxation of income from qualified electing funds

(a) Inclusion

(1) In general

Every United States person who owns (or is treated under section 1298(a) as owning) stock of a qualified electing fund at any time during the taxable year of such fund shall include in gross income—

(A) as ordinary income, such shareholder's pro rata share of the ordinary earnings of such fund for such year, and

(B) as long-term capital gain, such shareholder's pro rata share of the net capital gain of such fund for such year.

(2) Year of inclusion

The inclusion under paragraph (1) shall be for the taxable year of the shareholder in which or with which the taxable year of the fund ends.

(b) Pro rata share

The pro rata share referred to in subsection (a) in the case of any shareholder is the amount which would have been distributed with respect to the shareholder's stock if, on each day during the taxable year of the fund, the fund had distributed to each shareholder a pro rata share of that day's ratable share of the fund's ordinary earnings and net capital gain for such year. To the extent provided in regulations, if the fund establishes to the satisfaction of the Secretary that it uses a shorter period than the taxable year to determine shareholders' interests in the earnings of such fund, pro rata shares may be determined by using such shorter period.

(c) Previously taxed amounts distributed tax free

If the taxpayer establishes to the satisfaction of the Secretary that any amount distributed by a passive foreign investment company is paid out of earnings and profits of the company which were included under subsection (a) in the income of any United States person, such amount shall be treated, for purposes of this chapter, as a distribution which is not a dividend; except that such distribution shall immediately reduce earnings and profits. If the passive foreign investment company is a controlled foreign corporation (as defined in section 957(a)), the preceding sentence shall not apply to any United States shareholder (as defined in section 951(b)) in such corporation, and, in applying section 959 to any such shareholder, any inclusion under this section shall be treated as an inclusion under section 951(a)(1)(A).

(d) Basis adjustments

The basis of the taxpayer's stock in a passive foreign investment company shall be—

- (1) increased by any amount which is included in the income of the taxpayer under subsection (a) with respect to such stock, and
- (2) decreased by any amount distributed with respect to such stock which is not includible in the income of the taxpayer by reason of subsection (c).

A similar rule shall apply also in the case of any property if by reason of holding such property the taxpayer is treated under section 1298(a) as owning stock in a qualified electing fund.

(e) Ordinary earnings

For purposes of this section—

(1) Ordinary earnings

The term “ordinary earnings” means the excess of the earnings and profits of the qualified electing fund for the taxable year over its net capital gain for such taxable year.

(2) Limitation on net capital gain

A qualified electing fund’s net capital gain for any taxable year shall not exceed its earnings and profits for such taxable year.

(3) Determination of earnings and profits

The earnings and profits of any qualified electing fund shall be determined without regard to paragraphs (4), (5), and (6) of section 312(n). Under regulations, the preceding sentence shall not apply to the extent it would increase earnings and profits by an amount which was previously distributed by the qualified electing fund.

(f) Foreign tax credit allowed in the case of 10-percent corporate shareholder

For purposes of section 960—

(1) any amount included in the gross income under subsection (a) shall be treated as if it were included under section 951(a),

(2) any amount excluded from gross income under subsection (c) shall be treated in the same manner as amounts excluded from gross income under section 959, and

(3) a domestic corporation which owns (or is treated under section 1298(a) as owning) stock of a qualified electing fund shall be treated in the same manner as a United States shareholder of a controlled foreign corporation (and such qualified electing fund shall be treated in the same manner as such controlled foreign corporation) if such domestic corporation meets the stock ownership requirements of subsection (a) or (b) of section 902 (as in effect before its repeal) with respect to such qualified electing fund.

(g) Other special rules

(1) Exception for certain income

For purposes of determining the amount included in the gross income of any person under this section, the ordinary earnings and net capital gain of a qualified electing fund shall not include any item of income received by such fund if—

(A) such fund is a controlled foreign corporation (as defined in section 957(a)) and such person is a United States shareholder (as defined in section 951(b)) in such fund, and

(B) such person establishes to the satisfaction of the Secretary that—

(i) such income was subject to an effective rate of income tax imposed by a foreign country greater than 90 percent of the maximum rate of tax specified in section 11, or

(ii) such income is—

(I) from sources within the United States,

(II) effectively connected with the conduct by the qualified electing fund of a trade or business in the United States, and

(III) not exempt from taxation (or subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

(2) Prevention of double inclusion

The Secretary shall prescribe such adjustment to the provisions of this section as may be necessary to prevent the same item of income of a qualified electing fund from being included in the gross income of a United States person more than once.

(Added Pub. L. 99-514, title XII, § 1235(a), Oct. 22, 1986, 100 Stat. 2569; amended Pub. L. 100-647, title I, § 1012(p)(15), (18), (23), (32), Nov. 10, 1988, 102 Stat. 3518, 3519, 3521; Pub. L. 103-66, title XIII, § 13231(c)(3), Aug. 10, 1993, 107 Stat. 498; Pub. L. 105-34, title XI, § 1122(d)(3), Aug. 5, 1997, 111 Stat. 977; Pub. L. 115-97, title I, § 14301(c)(35), Dec. 22, 2017, 131 Stat. 2224.)

Editorial Notes

REFERENCES IN TEXT

Section 902 (as in effect before its repeal), referred to in subsec. (f)(3), means section 902 of this title as in effect before its repeal by Pub. L. 115-97, title I, § 14301(a), Dec. 22, 2017, 131 Stat. 2221.

AMENDMENTS

2017—Subsec. (f)(3). Pub. L. 115-97 added par. (3).

1997—Subsecs. (a)(1), (d). Pub. L. 105-34 substituted “section 1298(a)” for “section 1297(a)”.

1993—Subsec. (c). Pub. L. 103-66 inserted at end “If the passive foreign investment company is a controlled foreign corporation (as defined in section 957(a)), the preceding sentence shall not apply to any United States shareholder (as defined in section 951(b)) in such corporation, and, in applying section 959 to any such shareholder, any inclusion under this section shall be treated as an inclusion under section 951(a)(1)(A).”

1988—Subsec. (b). Pub. L. 100-647, § 1012(p)(15), inserted at end “To the extent provided in regulations, if the fund establishes to the satisfaction of the Secretary that it uses a shorter period than the taxable year to determine shareholders’ interests in the earnings of such fund, pro rata shares may be determined by using such shorter period.”

Subsec. (c). Pub. L. 100-647, § 1012(p)(23), inserted “, for purposes of this chapter,” after “shall be treated”, and “; except that such distribution shall immediately reduce earnings and profits” after “is not a dividend”.

Subsec. (e)(3). Pub. L. 100-647, § 1012(p)(18), added par. (3).

Subsec. (g). Pub. L. 100-647, § 1012(p)(32), added subsec. (g).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115-97 applicable to taxable years of foreign corporations beginning after Dec. 31,

2017, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 14301(d) of Pub. L. 115-97, set out as a note under section 78 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105-34, set out as a note under section 532 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103-66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99-514, set out as a note under section 1291 of this title.

§ 1294. Election to extend time for payment of tax on undistributed earnings

(a) Extension allowed by election

(1) In general

At the election of the taxpayer, the time for payment of any undistributed PFIC earnings tax liability of the taxpayer for the taxable year shall be extended to the extent and subject to the limitations provided in this section.

(2) Election not permitted where amounts otherwise includible under section 951

The taxpayer may not make an election under paragraph (1) with respect to the undistributed PFIC earnings tax liability attributable to a qualified electing fund for the taxable year if any amount is includible in the gross income of the taxpayer under section 951 with respect to such fund for such taxable year.

(b) Definitions

For purposes of this section—

(1) Undistributed PFIC earnings tax liability

The term “undistributed PFIC earnings tax liability” means, in the case of any taxpayer, the excess of—

(A) the tax imposed by this chapter for the taxable year, over

(B) the tax which would be imposed by this chapter for such year without regard to the inclusion in gross income under section 1293 of the undistributed earnings of a qualified electing fund.

(2) Undistributed earnings

The term “undistributed earnings” means, with respect to any qualified electing fund, the excess (if any) of—

(A) the amount includible in gross income by reason of section 1293(a) for the taxable year, over

(B) the amount not includible in gross income by reason of section 1293(c) for such taxable year.

(c) Termination of extension

(1) Distributions

(A) In general

If a distribution is not includible in gross income for the taxable year by reason of section 1293(c), then the extension under subsection (a) for payment of the undistributed PFIC earnings tax liability with respect to the earnings to which such distribution is attributable shall expire on the last date prescribed by law (determined without regard to extensions) for filing the return of tax for such taxable year.

(B) Ordering rule

For purposes of subparagraph (A), a distribution shall be treated as made from the most recently accumulated earnings and profits.

(2) Transfers, etc.

If—

(A) stock in a passive foreign investment company is transferred during the taxable year, or

(B) a passive foreign investment company ceases to be a qualified electing fund,

all extensions under subsection (a) for payment of undistributed PFIC earnings tax liability attributable to such stock (or, in the case of such a cessation, attributable to any stock in such company) which had not expired before the date of such transfer or cessation shall expire on the last date prescribed by law (determined without regard to extensions) for filing the return of tax for the taxable year in which such transfer or cessation occurs. To the extent provided in regulations, the preceding sentence shall not apply in the case of a transfer in a transaction with respect to which gain or loss is not recognized (in whole or in part), and the transferee in such transaction shall succeed to the treatment under this section of the transferor.

(3) Jeopardy

If the Secretary believes that collection of an amount to which an extension under this section relates is in jeopardy, the Secretary shall immediately terminate such extension with respect to such amount, and notice and demand shall be made by him for payment of such amount.

(d) Election

The election under subsection (a) shall be made not later than the time prescribed by law (including extensions) for filing the return of tax imposed by this chapter for the taxable year.

(e) Authority to require bond

Section 6165 shall apply to any extension under this section as though the Secretary were extending the time for payment of the tax.

(f) Treatment of loans to shareholder

For purposes of this section and section 1293, any loan by a qualified electing fund (directly or indirectly) to a shareholder of such fund shall be treated as a distribution to such shareholder.

(g) Cross reference

For provisions providing for interest for the period of the extension under this section, see section 6601.

(Added Pub. L. 99-514, title XII, §1235(a), Oct. 22, 1986, 100 Stat. 2570; amended Pub. L. 100-647, title I, §1012(p)(4), (8), (25), (34), Nov. 10, 1988, 102 Stat. 3515, 3517, 3519, 3522; Pub. L. 108-357, title IV, §413(c)(25), Oct. 22, 2004, 118 Stat. 1509.)

Editorial Notes**AMENDMENTS**

2004—Subsec. (a)(2). Pub. L. 108-357 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: “The taxpayer may not make an election under paragraph (1) with respect to the undistributed PFIC earnings tax liability attributable to a qualified electing fund for the taxable year if—

“(A) any amount is includible in the gross income of the taxpayer under section 551 with respect to such fund for such taxable year, or

“(B) any amount is includible in the gross income of the taxpayer under section 951 with respect to such fund for such taxable year.”

1988—Subsec. (c)(2). Pub. L. 100-647, §1012(p)(4), (34), substituted “Transfers” for “Dispositions” in heading and “is transferred” for “is disposed of” in subpar. (A), and in closing provisions substituted “such transfer” for “such disposition” in two places and inserted at end “To the extent provided in regulations, the preceding sentence shall not apply in the case of a transfer in a transaction with respect to which gain or loss is not recognized (in whole or in part), and the transferee in such transaction shall succeed to the treatment under this section of the transferor.”

Subsec. (f). Pub. L. 100-647, §1012(p)(25), added subsec. (f).

Subsec. (g). Pub. L. 100-647, §1012(p)(8), added subsec. (g).

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2004 AMENDMENT**

Amendment by Pub. L. 108-357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108-357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99-514, set out as a note under section 1291 of this title.

§ 1295. Qualified electing fund**(a) General rule**

For purposes of this part, any passive foreign investment company shall be treated as a quali-

fied electing fund with respect to the taxpayer if—

(1) an election by the taxpayer under subsection (b) applies to such company for the taxable year, and

(2) such company complies with such requirements as the Secretary may prescribe for purposes of—

(A) determining the ordinary earnings and net capital gain of such company, and

(B) otherwise carrying out the purposes of this subpart.

(b) Election**(1) In general**

A taxpayer may make an election under this subsection with respect to any passive foreign investment company for any taxable year of the taxpayer. Such an election, once made with respect to any company, shall apply to all subsequent taxable years of the taxpayer with respect to such company unless revoked by the taxpayer with the consent of the Secretary.

(2) When made

An election under this subsection may be made for any taxable year at any time on or before the due date (determined with regard to extensions) for filing the return of the tax imposed by this chapter for such taxable year. To the extent provided in regulations, such an election may be made later than as required in the preceding sentence where the taxpayer fails to make a timely election because the taxpayer reasonably believed that the company was not a passive foreign investment company.

(Added Pub. L. 99-514, title XII, §1235(a), Oct. 22, 1986, 100 Stat. 2571; amended Pub. L. 100-647, title I, §1012(p)(37)(A), title VI, §6127(a), Nov. 10, 1988, 102 Stat. 3522, 3715.)

Editorial Notes**AMENDMENTS**

1988—Subsec. (a). Pub. L. 100-647, §6127(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “For purposes of this part, the term ‘qualified electing fund’ means any passive foreign investment company if—

“(1) an election under subsection (b) applies to such company for the taxable year, and

“(2) such company complies for such taxable year with such requirements as the Secretary may prescribe for purposes of—

“(A) determining the ordinary earnings and net capital gain of such company for the taxable year,

“(B) ascertaining the ownership of its outstanding stock, and

“(C) otherwise carrying out the purposes of this subpart.”

Subsec. (b). Pub. L. 100-647, §6127(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

“(1) IN GENERAL.—A passive foreign investment company may make an election under this subsection for any taxable year. Such an election, once made, shall apply to all subsequent taxable years of such company for which such company is a passive foreign investment company unless revoked with the consent of the Secretary.

“(2) WHEN MADE.—An election under this subsection may be made for any taxable year at any time before

the 15th day of the 3rd month of the following taxable year. To the extent provided in regulations, such an election may be made later than as required by the preceding sentence in cases where the company failed to make a timely election because it reasonably believed it was not a passive foreign investment company.”

Pub. L. 100-647, §1012(p)(37)(A), inserted sentence at end of par. (2) permitting a later election when a company reasonably believed it was not a passive foreign investment company.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1012(p)(37)(A) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Pub. L. 100-647, title VI, §6127(c), Nov. 10, 1988, 102 Stat. 3715, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 1291 of this title] shall take effect as if included in the amendments made by section 1235 of the Reform Act [Pub. L. 99-514].

“(2) TIME FOR MAKING ELECTION.—The period during which an election under section 1295(b) of the 1986 Code may be made shall in no event expire before the date 60 days after the date of the enactment of this Act [Nov. 10, 1988].”

EFFECTIVE DATE

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99-514, set out as a note under section 1291 of this title.

EXPIRATION OF SUBSECTION (b) ELECTION PERIOD

Pub. L. 100-647, title I, §1012(p)(37)(B), Nov. 10, 1988, 102 Stat. 3522, provided that: “The period during which an election under section 1295(b) of the 1986 Code may be made shall in no event expire before the date 60 days after the date of enactment of this Act [Nov. 10, 1988].”

SUBPART C—ELECTION OF MARK TO MARKET FOR MARKETABLE STOCK

Sec.

1296. Election of mark to market for marketable stock.

Editorial Notes

PRIOR PROVISIONS

A prior subpart C, consisting of sections 1296 and 1297 of this title, was redesignated subpart D consisting of sections 1297 and 1298.

AMENDMENTS

1997—Pub. L. 105-34, title XI, §1122(a), Aug. 5, 1997, 111 Stat. 972, added subpart C and item 1296. Former subpart C redesignated D.

§ 1296. Election of mark to market for marketable stock

(a) General rule

In the case of marketable stock in a passive foreign investment company which is owned (or treated under subsection (g) as owned) by a United States person at the close of any taxable year of such person, at the election of such person—

(1) If the fair market value of such stock as of the close of such taxable year exceeds its adjusted basis, such United States person shall

include in gross income for such taxable year an amount equal to the amount of such excess.

(2) If the adjusted basis of such stock exceeds the fair market value of such stock as of the close of such taxable year, such United States person shall be allowed a deduction for such taxable year equal to the lesser of—

(A) the amount of such excess, or

(B) the unreversed inclusions with respect to such stock.

(b) Basis adjustments

(1) In general

The adjusted basis of stock in a passive foreign investment company—

(A) shall be increased by the amount included in the gross income of the United States person under subsection (a)(1) with respect to such stock, and

(B) shall be decreased by the amount allowed as a deduction to the United States person under subsection (a)(2) with respect to such stock.

(2) Special rule for stock constructively owned

In the case of stock in a passive foreign investment company which the United States person is treated as owning under subsection (g)—

(A) the adjustments under paragraph (1) shall apply to such stock in the hands of the person actually holding such stock but only for purposes of determining the subsequent treatment under this chapter of the United States person with respect to such stock, and

(B) similar adjustments shall be made to the adjusted basis of the property by reason of which the United States person is treated as owning such stock.

(c) Character and source rules

(1) Ordinary treatment

(A) Gain

Any amount included in gross income under subsection (a)(1), and any gain on the sale or other disposition of marketable stock in a passive foreign investment company (with respect to which an election under this section is in effect), shall be treated as ordinary income.

(B) Loss

Any—

(i) amount allowed as a deduction under subsection (a)(2), and

(ii) loss on the sale or other disposition of marketable stock in a passive foreign investment company (with respect to which an election under this section is in effect) to the extent that the amount of such loss does not exceed the unreversed inclusions with respect to such stock,

shall be treated as an ordinary loss. The amount so treated shall be treated as a deduction allowable in computing adjusted gross income.

(2) Source

The source of any amount included in gross income under subsection (a)(1) (or allowed as a

deduction under subsection (a)(2)) shall be determined in the same manner as if such amount were gain or loss (as the case may be) from the sale of stock in the passive foreign investment company.

(d) Unreversed inclusions

For purposes of this section, the term “unreversed inclusions” means, with respect to any stock in a passive foreign investment company, the excess (if any) of—

- (1) the amount included in gross income of the taxpayer under subsection (a)(1) with respect to such stock for prior taxable years, over
- (2) the amount allowed as a deduction under subsection (a)(2) with respect to such stock for prior taxable years.

The amount referred to in paragraph (1) shall include any amount which would have been included in gross income under subsection (a)(1) with respect to such stock for any prior taxable year but for section 1291. In the case of a regulated investment company which elected to mark to market the stock held by such company as of the last day of the taxable year preceding such company's first taxable year for which such company elects the application of this section, the amount referred to in paragraph (1) shall include amounts included in gross income under such mark to market with respect to such stock for prior taxable years.

(e) Marketable stock

For purposes of this section—

(1) In general

The term “marketable stock” means—

(A) any stock which is regularly traded on—

(i) a national securities exchange which is registered with the Securities and Exchange Commission or the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or

(ii) any exchange or other market which the Secretary determines has rules adequate to carry out the purposes of this part,

(B) to the extent provided in regulations, stock in any foreign corporation which is comparable to a regulated investment company and which offers for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value, and

(C) to the extent provided in regulations, any option on stock described in subparagraph (A) or (B).

(2) Special rule for regulated investment companies

In the case of any regulated investment company which is offering for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value, all stock in a passive foreign investment company which it owns directly or indirectly shall be treated as marketable stock for purposes of this section. Except as provided in regula-

tions, similar treatment as marketable stock shall apply in the case of any other regulated investment company which publishes net asset valuations at least annually.

(f) Treatment of controlled foreign corporations which are shareholders in passive foreign investment companies

In the case of a foreign corporation which is a controlled foreign corporation and which owns (or is treated under subsection (g) as owning) stock in a passive foreign investment company—

(1) this section (other than subsection (c)(2)) shall apply to such foreign corporation in the same manner as if such corporation were a United States person, and

(2) for purposes of subpart F of part III of subchapter N—

(A) any amount included in gross income under subsection (a)(1) shall be treated as foreign personal holding company income described in section 954(c)(1)(A), and

(B) any amount allowed as a deduction under subsection (a)(2) shall be treated as a deduction allocable to foreign personal holding company income so described.

(g) Stock owned through certain foreign entities

Except as provided in regulations—

(1) In general

For purposes of this section, stock owned, directly or indirectly, by or for a foreign partnership or foreign trust or foreign estate shall be considered as being owned proportionately by its partners or beneficiaries. Stock considered to be owned by a person by reason of the application of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person.

(2) Treatment of certain dispositions

In any case in which a United States person is treated as owning stock in a passive foreign investment company by reason of paragraph (1)—

(A) any disposition by the United States person or by any other person which results in the United States person being treated as no longer owning such stock, and

(B) any disposition by the person owning such stock,

shall be treated as a disposition by the United States person of the stock in the passive foreign investment company.

(h) Coordination with section 851(b)

For purposes of section 851(b)(2), any amount included in gross income under subsection (a) shall be treated as a dividend.

(i) Stock acquired from a decedent

In the case of stock of a passive foreign investment company which is acquired by bequest, devise, or inheritance (or by the decedent's estate) and with respect to which an election under this section was in effect as of the date of the decedent's death, notwithstanding section 1014, the basis of such stock in the hands of the person so acquiring it shall be the adjusted basis of such stock in the hands of the decedent immediately before his death (or, if lesser, the basis which would have been determined under section 1014 without regard to this subsection).

(j) Coordination with section 1291 for first year of election**(1) Taxpayers other than regulated investment companies****(A) In general**

If the taxpayer elects the application of this section with respect to any marketable stock in a corporation after the beginning of the taxpayer's holding period in such stock, and if the requirements of subparagraph (B) are not satisfied, section 1291 shall apply to—

(i) any distributions with respect to, or disposition of, such stock in the first taxable year of the taxpayer for which such election is made, and

(ii) any amount which, but for section 1291, would have been included in gross income under subsection (a) with respect to such stock for such taxable year in the same manner as if such amount were gain on the disposition of such stock.

(B) Requirements

The requirements of this subparagraph are met if, with respect to each of such corporation's taxable years for which such corporation was a passive foreign investment company and which begin after December 31, 1986, and included any portion of the taxpayer's holding period in such stock, such corporation was treated as a qualified electing fund under this part with respect to the taxpayer.

(2) Special rules for regulated investment companies**(A) In general**

If a regulated investment company elects the application of this section with respect to any marketable stock in a corporation after the beginning of the taxpayer's holding period in such stock, then, with respect to such company's first taxable year for which such company elects the application of this section with respect to such stock—

(i) section 1291 shall not apply to such stock with respect to any distribution or disposition during, or amount included in gross income under this section for, such first taxable year, but

(ii) such regulated investment company's tax under this chapter for such first taxable year shall be increased by the aggregate amount of interest which would have been determined under section 1291(c)(3) if section 1291 were applied without regard to this subparagraph.

Clause (ii) shall not apply if for the preceding taxable year the company elected to mark to market the stock held by such company as of the last day of such preceding taxable year.

(B) Disallowance of deduction

No deduction shall be allowed to any regulated investment company for the increase in tax under subparagraph (A)(ii).

(k) Election

This section shall apply to marketable stock in a passive foreign investment company which

is held by a United States person only if such person elects to apply this section with respect to such stock. Such an election shall apply to the taxable year for which made and all subsequent taxable years unless—

(1) such stock ceases to be marketable stock, or

(2) the Secretary consents to the revocation of such election.

(l) Transition rule for individuals becoming subject to United States tax

If any individual becomes a United States person in a taxable year beginning after December 31, 1997, solely for purposes of this section, the adjusted basis (before adjustments under subsection (b)) of any marketable stock in a passive foreign investment company owned by such individual on the first day of such taxable year shall be treated as being the greater of its fair market value on such first day or its adjusted basis on such first day.

(Added Pub. L. 105-34, title XI, §1122(a), Aug. 5, 1997, 111 Stat. 972; amended Pub. L. 105-206, title VI, §6011(c)(3), July 22, 1998, 112 Stat. 818; Pub. L. 107-16, title V, §542(e)(5)(C), June 7, 2001, 115 Stat. 85; Pub. L. 108-311, title IV, §408(a)(19), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 111-312, title III, §301(a), Dec. 17, 2010, 124 Stat. 3300.)

Editorial Notes**REFERENCES IN TEXT**

Section 11A of the Securities and Exchange Act of 1934, referred to in subsec. (e)(1)(A)(i), is classified to section 78k-1 of Title 15, Commerce and Trade.

PRIOR PROVISIONS

A prior section 1296 was renumbered section 1297 of this title.

AMENDMENTS

2010—Subsec. (i). Pub. L. 111-312 amended subsec. (i) to read as if amendment by Pub. L. 107-16, §542(e)(5)(C), had never been enacted. See 2001 Amendment note below.

2004—Subsec. (h). Pub. L. 108-311 substituted “section 851(b)(2)” for “paragraphs (2) and (3) of section 851(b)”.

2001—Subsec. (i). Pub. L. 107-16, §542(e)(5)(C), struck out subsec. (i). Text read as follows: “In the case of stock of a passive foreign investment company which is acquired by bequest, devise, or inheritance (or by the decedent's estate) and with respect to which an election under this section was in effect as of the date of the decedent's death, notwithstanding section 1014, the basis of such stock in the hands of the person so acquiring it shall be the adjusted basis of such stock in the hands of the decedent immediately before his death (or, if lesser, the basis which would have been determined under section 1014 without regard to this subsection).”

1998—Subsec. (d). Pub. L. 105-206 inserted at end “In the case of a regulated investment company which elected to mark to market the stock held by such company as of the last day of the taxable year preceding such company's first taxable year for which such company elects the application of this section, the amount referred to in paragraph (1) shall include amounts included in gross income under such mark to market with respect to such stock for prior taxable years.”

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by Pub. L. 111-312 applicable to estates of decedents dying, and transfers made after Dec. 31,

2009, except as otherwise provided, see section 301(e) of Pub. L. 111-312, set out as an Effective and Termination Dates of 2010 Amendment note under section 121 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying after Dec. 31, 2009, see section 542(f)(1) of Pub. L. 107-16, set out as a note under section 121 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105-34, set out as an Effective Date of 1997 Amendment note under section 532 of this title.

SUBPART D—GENERAL PROVISIONS

Sec.	
1297.	Passive foreign investment company.
1298.	Special rules.

Editorial Notes

AMENDMENTS

1997—Pub. L. 105-34, title XI, §1122(a), (d)(5), Aug. 5, 1997, 111 Stat. 972, 977, redesignated subpart C of this part as this subpart and amended table of sections generally, renumbering items 1296 and 1297 as 1297 and 1298, respectively.

§ 1297. Passive foreign investment company

(a) In general

For purposes of this part, except as otherwise provided in this subpart, the term “passive foreign investment company” means any foreign corporation if—

- (1) 75 percent or more of the gross income of such corporation for the taxable year is passive income, or
- (2) the average percentage of assets (as determined in accordance with subsection (e)) held by such corporation during the taxable year which produce passive income or which are held for the production of passive income is at least 50 percent.

(b) Passive income

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term “passive income” means any income which is of a kind which would be foreign personal holding company income as defined in section 954(c).

(2) Exceptions

Except as provided in regulations, the term “passive income” does not include any income—

- (A) derived in the active conduct of a banking business by an institution licensed to do business as a bank in the United States (or, to the extent provided in regulations, by any other corporation),

- (B) derived in the active conduct of an insurance business by a qualifying insurance corporation (as defined in subsection (f)),

- (C) which is interest, a dividend, or a rent or royalty, which is received or accrued from a related person (within the meaning of section 954(d)(3)) to the extent such amount is properly allocable (under regulations prescribed by the Secretary) to income of such related person which is not passive income, or

- (D) which is export trade income of an export trade corporation (as defined in section 971).

For purposes of subparagraph (C), the term “related person” has the meaning given such term by section 954(d)(3) determined by substituting “foreign corporation” for “controlled foreign corporation” each place it appears in section 954(d)(3).

(c) Look-thru in the case of 25-percent owned corporations

If a foreign corporation owns (directly or indirectly) at least 25 percent (by value) of the stock of another corporation, for purposes of determining whether such foreign corporation is a passive foreign investment company, such foreign corporation shall be treated as if it—

- (1) held its proportionate share of the assets of such other corporation, and
- (2) received directly its proportionate share of the income of such other corporation.

(d) Exception for United States shareholders of controlled foreign corporations

(1) In general

For purposes of this part, a corporation shall not be treated with respect to a shareholder as a passive foreign investment company during the qualified portion of such shareholder's holding period with respect to stock in such corporation.

(2) Qualified portion

For purposes of this subsection, the term “qualified portion” means the portion of the shareholder's holding period—

- (A) which is after December 31, 1997, and

- (B) during which the shareholder is a United States shareholder (as defined in section 951(b)) of the corporation and the corporation is a controlled foreign corporation.

(3) New holding period if qualified portion ends

(A) In general

Except as provided in subparagraph (B), if the qualified portion of a shareholder's holding period with respect to any stock ends after December 31, 1997, solely for purposes of this part, the shareholder's holding period with respect to such stock shall be treated as beginning as of the first day following such period.

(B) Exception

Subparagraph (A) shall not apply if such stock was, with respect to such shareholder, stock in a passive foreign investment company at any time before the qualified portion of the shareholder's holding period with

respect to such stock and no election under section 1298(b)(1) is made.

(4) Treatment of holders of options

Paragraph (1) shall not apply to stock treated as owned by a person by reason of section 1298(a)(4) (relating to the treatment of a person that has an option to acquire stock as owning such stock) unless such person establishes that such stock is owned (within the meaning of section 958(a)) by a United States shareholder (as defined in section 951(b)) who is not exempt from tax under this chapter.

(e) Methods for measuring assets

(1) Determination using value

The determination under subsection (a)(2) shall be made on the basis of the value of the assets of a foreign corporation if—

- (A) such corporation is a publicly traded corporation for the taxable year, or
- (B) paragraph (2) does not apply to such corporation for the taxable year.

(2) Determination using adjusted bases

The determination under subsection (a)(2) shall be based on the adjusted bases (as determined for the purposes of computing earnings and profits) of the assets of a foreign corporation if such corporation is not described in paragraph (1)(A) and such corporation—

- (A) is a controlled foreign corporation, or
- (B) elects the application of this paragraph.

An election under subparagraph (B), once made, may be revoked only with the consent of the Secretary.

(3) Publicly traded corporation

For purposes of this subsection, a foreign corporation shall be treated as a publicly traded corporation if the stock in the corporation is regularly traded on—

- (A) a national securities exchange which is registered with the Securities and Exchange Commission or the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or
- (B) any exchange or other market which the Secretary determines has rules adequate to carry out the purposes of this subsection.

(f) Qualifying insurance corporation

For purposes of subsection (b)(2)(B)—

(1) In general

The term “qualifying insurance corporation” means, with respect to any taxable year, a foreign corporation—

- (A) which would be subject to tax under subchapter L if such corporation were a domestic corporation, and
- (B) the applicable insurance liabilities of which constitute more than 25 percent of its total assets, determined on the basis of such liabilities and assets as reported on the corporation’s applicable financial statement for the last year ending with or within the taxable year.

(2) Alternative facts and circumstances test for certain corporations

If a corporation fails to qualify as a qualified insurance corporation under paragraph (1)

solely because the percentage determined under paragraph (1)(B) is 25 percent or less, a United States person that owns stock in such corporation may elect to treat such stock as stock of a qualifying insurance corporation if—

- (A) the percentage so determined for the corporation is at least 10 percent, and
- (B) under regulations provided by the Secretary, based on the applicable facts and circumstances—
 - (i) the corporation is predominantly engaged in an insurance business, and
 - (ii) such failure is due solely to runoff-related or rating-related circumstances involving such insurance business.

(3) Applicable insurance liabilities

For purposes of this subsection—

(A) In general

The term “applicable insurance liabilities” means, with respect to any life or property and casualty insurance business—

- (i) loss and loss adjustment expenses, and
- (ii) reserves (other than deficiency, contingency, or unearned premium reserves) for life and health insurance risks and life and health insurance claims with respect to contracts providing coverage for mortality or morbidity risks.

(B) Limitations on amount of liabilities

Any amount determined under clause (i) or (ii) of subparagraph (A) shall not exceed the lesser of such amount—

- (i) as reported to the applicable insurance regulatory body in the applicable financial statement described in paragraph (4)(A) (or, if less, the amount required by applicable law or regulation), or
- (ii) as determined under regulations prescribed by the Secretary.

(4) Other definitions and rules

For purposes of this subsection—

(A) Applicable financial statement

The term “applicable financial statement” means a statement for financial reporting purposes which—

- (i) is made on the basis of generally accepted accounting principles,
- (ii) is made on the basis of international financial reporting standards, but only if there is no statement that meets the requirement of clause (i), or
- (iii) except as otherwise provided by the Secretary in regulations, is the annual statement which is required to be filed with the applicable insurance regulatory body, but only if there is no statement which meets the requirements of clause (i) or (ii).

(B) Applicable insurance regulatory body

The term “applicable insurance regulatory body” means, with respect to any insurance business, the entity established by law to license, authorize, or regulate such business and to which the statement described in subparagraph (A) is provided.

(Added Pub. L. 99-514, title XII, §1235(a), Oct. 22, 1986, 100 Stat. 2572, §1296; amended Pub. L. 100-647, title I, §§1012(p)(2), (5), (16), (26), (27), 1018(u)(40), Nov. 10, 1988, 102 Stat. 3515, 3518-3520, 3592; Pub. L. 103-66, title XIII, §13231(d)(1), (3), Aug. 10, 1993, 107 Stat. 499; Pub. L. 104-188, title I, §1704(r)(1), Aug. 20, 1996, 110 Stat. 1887; renumbered §1297 and amended Pub. L. 105-34, title XI, §§1121, 1122(a), (d)(4), 1123, Aug. 5, 1997, 111 Stat. 971, 972, 977; Pub. L. 105-206, title VI, §6011(b)(1), (d), July 22, 1998, 112 Stat. 817, 818; Pub. L. 110-172, §11(a)(24)(A), (g)(18), Dec. 29, 2007, 121 Stat. 2486, 2491; Pub. L. 115-97, title I, §14501(a), (b), Dec. 22, 2017, 131 Stat. 2234.)

Editorial Notes

REFERENCES IN TEXT

Section 11A of the Securities and Exchange Act of 1934, referred to in subsec. (e)(3)(A), is classified to section 78k-1 of Title 15, Commerce and Trade.

PRIOR PROVISIONS

A prior section 1297 was renumbered section 1298 of this title.

AMENDMENTS

2017—Subsec. (b)(2)(B). Pub. L. 115-97, §14501(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “derived in the active conduct of an insurance business by a corporation which is predominantly engaged in an insurance business and which would be subject to tax under subchapter L if it were a domestic corporation.”

Subsec. (f). Pub. L. 115-97, §14501(b), added subsec. (f).
2007—Subsec. (b)(2)(D). Pub. L. 110-172, §11(g)(18), which directed amendment of subpar. (D) by striking out “foreign trade income of a FSC or”, was executed by striking out “foreign trade income of an FSC or” before “export trade income” to reflect the probable intent of Congress.

Subsecs. (d) to (f). Pub. L. 110-172, §11(a)(24)(A), redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out heading and text of former subsec. (d). Text read as follows: “For purposes of this part, the term ‘passive foreign investment company’ does not include any foreign investment company to which section 1247 applies.”

1998—Subsec. (e). Pub. L. 105-206, §6011(d), redesignated subsec. (e), relating to methods for measuring assets, as (f).

Subsec. (e)(4). Pub. L. 105-206, §6011(b)(1), added par. (4).

Subsec. (f). Pub. L. 105-206, §6011(d), redesignated subsec. (e), relating to methods for measuring assets, as (f).

1997—Pub. L. 105-34, §1122(a), renumbered section 1296 of this title as this section.

Subsec. (a). Pub. L. 105-34, §1123(b)(2), struck out concluding provisions which read as follows: “In the case of a controlled foreign corporation (or any other foreign corporation if such corporation so elects), the determination under paragraph (2) shall be based on the adjusted bases (as determined for purposes of computing earnings and profits) of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.”

Subsec. (a)(2). Pub. L. 105-34, §1123(b)(1), substituted “(as determined in accordance with subsection (e))” for “(by value)”.

Subsec. (b)(3). Pub. L. 105-34, §1122(d)(4), struck out par. (3) which consisted of subpars. (A) to (C) relating to treatment of certain dealers in securities.

Subsec. (e). Pub. L. 105-34, §1123(a), added subsec. (e) relating to methods for measuring assets.

Pub. L. 105-34, §1121, added subsec. (e) relating to exception for United States shareholders of controlled foreign corporations.

1996—Subsec. (b)(2)(D). Pub. L. 104-188 added subpar. (D).

1993—Subsec. (a). Pub. L. 103-66, §13231(d)(1), substituted in closing provisions “In the case of a controlled foreign corporation (or any other foreign corporation if such corporation so elects), the determination under paragraph (2) shall be based on the adjusted bases (as determined for purposes of computing earnings and profits) of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.” for “A foreign corporation may elect to have the determination under paragraph (2) based on the adjusted bases of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.”

Subsec. (b)(3). Pub. L. 103-66, §13231(d)(3), added par. (3).

1988—Subsec. (a). Pub. L. 100-647, §1018(u)(40), inserted a comma after “subpart”.

Pub. L. 100-647, §1012(p)(27), inserted at end “A foreign corporation may elect to have the determination under paragraph (2) based on the adjusted bases of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.”

Subsec. (b)(1). Pub. L. 100-647, §1012(p)(5), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Except as provided in paragraph (2), the term ‘passive income’ has the meaning given such term by section 904(d)(2)(A) without regard to the exceptions contained in clause (iii) thereof.”

Subsec. (b)(2). Pub. L. 100-647, §1012(p)(26), substituted “Exceptions” for “Exception for certain banks and insurance companies” in heading, and inserted sentence at end defining “related person”.

Subsec. (b)(2)(B). Pub. L. 100-647, §1012(p)(16), inserted “is predominantly engaged in an insurance business and which” after “a corporation which”.

Subsec. (b)(2)(C). Pub. L. 100-647, §1012(p)(26)(A), added subpar. (C).

Subsec. (c). Pub. L. 100-647, §1012(p)(2), inserted “(directly or indirectly)” after “foreign corporation owns”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-97, title I, §14501(c), Dec. 22, 2017, 131 Stat. 2235, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105-34, set out as a note under section 532 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, §1704(r)(2), Aug. 20, 1996, 110 Stat. 1887, provided that: “The amendments made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 1235 of the Tax Reform Act of 1986 [Pub. L. 99-514].”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign

corporations end, see section 13231(e) of Pub. L. 103-66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section 1235(h) of Pub. L. 99-514, set out as a note under section 1291 of this title.

§ 1298. Special rules

(a) Attribution of ownership

For purposes of this part—

(1) Attribution to United States persons

This subsection—

(A) shall apply to the extent that the effect is to treat stock of a passive foreign investment company as owned by a United States person, and

(B) except to the extent provided in regulations, shall not apply to treat stock owned (or treated as owned under this subsection) by a United States person as owned by any other person.

(2) Corporations

(A) In general

If 50 percent or more in value of the stock of a corporation is owned, directly or indirectly, by or for any person, such person shall be considered as owning the stock owned directly or indirectly by or for such corporation in that proportion which the value of the stock which such person so owns bears to the value of all stock in the corporation.

(B) 50-percent limitation not to apply to PFIC

For purposes of determining whether a shareholder of a passive foreign investment company is treated as owning stock owned directly or indirectly by or for such company, subparagraph (A) shall be applied without regard to the 50-percent limitation contained therein. Section 1297(d) shall not apply in determining whether a corporation is a passive foreign investment company for purposes of this subparagraph.

(3) Partnerships, etc.

Stock owned, directly or indirectly, by or for a partnership, estate, or trust shall be considered as being owned proportionately by its partners or beneficiaries.

(4) Options

To the extent provided in regulations, if any person has an option to acquire stock, such stock shall be considered as owned by such person. For purposes of this paragraph, an option to acquire such an option, and each one of a series of such options, shall be considered as an option to acquire such stock.

(5) Successive application

Stock considered to be owned by a person by reason of the application of paragraph (2), (3),

or (4) shall, for purposes of applying such paragraphs, be considered as actually owned by such person.

(b) Other special rules

For purposes of this part—

(1) Time for determination

Stock held by a taxpayer shall be treated as stock in a passive foreign investment company if, at any time during the holding period of the taxpayer with respect to such stock, such corporation (or any predecessor) was a passive foreign investment company which was not a qualified electing fund. The preceding sentence shall not apply if the taxpayer elects to recognize gain (as of the last day of the last taxable year for which the company was a passive foreign investment company (determined without regard to the preceding sentence)) under rules similar to the rules of section 1291(d)(2).

(2) Certain corporations not treated as PFIC's during start-up year

A corporation shall not be treated as a passive foreign investment company for the first taxable year such corporation has gross income (hereinafter in this paragraph referred to as the "start-up year") if—

(A) no predecessor of such corporation was a passive foreign investment company,

(B) it is established to the satisfaction of the Secretary that such corporation will not be a passive foreign investment company for either of the 1st 2 taxable years following the start-up year, and

(C) such corporation is not a passive foreign investment company for either of the 1st 2 taxable years following the start-up year.

(3) Certain corporations changing businesses

A corporation shall not be treated as a passive foreign investment company for any taxable year if—

(A) neither such corporation (nor any predecessor) was a passive foreign investment company for any prior taxable year,

(B) it is established to the satisfaction of the Secretary that—

(i) substantially all of the passive income of the corporation for the taxable year is attributable to proceeds from the disposition of 1 or more active trades or businesses, and

(ii) such corporation will not be a passive foreign investment company for either of the 1st 2 taxable years following such taxable year, and

(C) such corporation is not a passive foreign investment company for either of such 2 taxable years.

(4) Separate interests treated as separate corporations

Under regulations prescribed by the Secretary, where necessary to carry out the purposes of this part, separate classes of stock (or other interests) in a corporation shall be treated as interests in separate corporations.

(5) Application of part where stock held by other entity**(A) In general**

Under regulations, in any case in which a United States person is treated as owning stock in a passive foreign investment company by reason of subsection (a)—

(i) any disposition by the United States person or the person owning such stock which results in the United States person being treated as no longer owning such stock, or

(ii) any distribution of property in respect of such stock to the person holding such stock,

shall be treated as a disposition by, or distribution to, the United States person with respect to the stock in the passive foreign investment company.

(B) Amount treated in same manner as previously taxed income

Rules similar to the rules of section 959(b) shall apply to any amount described in subparagraph (A) and to any amount included in gross income under section 1293(a) (or which would have been so included but for section 951(c)) in respect of stock which the taxpayer is treated as owning under subsection (a).

(6) Dispositions

Except as provided in regulations, if a taxpayer uses any stock in a passive foreign investment company as security for a loan, the taxpayer shall be treated as having disposed of such stock.

(7) Treatment of certain foreign corporations owning stock in 25-percent owned domestic corporation**(A) In general**

If—

(i) a foreign corporation is subject to the tax imposed by section 531 (or waives any benefit under any treaty which would otherwise prevent the imposition of such tax), and

(ii) such foreign corporation owns at least 25 percent (by value) of the stock of a domestic corporation,

for purposes of determining whether such foreign corporation is a passive foreign investment company, any qualified stock held by such domestic corporation shall be treated as an asset which does not produce passive income (and is not held for the production of passive income) and any amount included in gross income with respect to such stock shall not be treated as passive income.

(B) Qualified stock

For purposes of subparagraph (A), the term “qualified stock” means any stock in a C corporation which is a domestic corporation and which is not a regulated investment company or real estate investment trust.

(8) Treatment of certain subpart F inclusions

Any amount included in gross income under section 951(a)(1)(B) shall be treated as a distribution received with respect to the stock.

(c) Treatment of stock held by pooled income fund

If stock in a passive foreign investment company is owned (or treated as owned under subsection (a)) by a pooled income fund (as defined in section 642(c)(5)) and no portion of any gain from a disposition of such stock may be allocated to income under the terms of the governing instrument of such fund—

(1) section 1291 shall not apply to any gain on a disposition of such stock by such fund if (without regard to section 1291) a deduction would be allowable with respect to such gain under section 642(c)(3),

(2) section 1293 shall not apply with respect to such stock, and

(3) in determining whether section 1291 applies to any distribution in respect of such stock, subsection (d) of section 1291 shall not apply.

(d) Treatment of certain leased property

For purposes of this part—

(1) In general

Any tangible personal property with respect to which a foreign corporation is the lessee under a lease with a term of at least 12 months shall be treated as an asset actually held by such corporation.

(2) Amount taken into account**(A) In general**

The amount taken into account under section 1297(a)(2) with respect to any asset to which paragraph (1) applies shall be the unamortized portion (as determined under regulations prescribed by the Secretary) of the present value of the payments under the lease for the use of such property.

(B) Present value

For purposes of subparagraph (A), the present value of payments described in subparagraph (A) shall be determined in the manner provided in regulations prescribed by the Secretary—

(i) as of the beginning of the lease term, and

(ii) except as provided in such regulations, by using a discount rate equal to the applicable Federal rate determined under section 1274(d)—

(I) by substituting the lease term for the term of the debt instrument, and

(II) without regard to paragraph (2) or (3) thereof.

(3) Exceptions

This subsection shall not apply in any case where—

(A) the lessor is a related person (as defined in section 954(d)(3)) with respect to the foreign corporation, or

(B) a principal purpose of leasing the property was to avoid the provisions of this part.

(e) Special rules for certain intangibles

For purposes of this part—

(1) Research expenditures

The adjusted basis of the total assets of a controlled foreign corporation shall be in-

creased by the research or experimental expenditures (within the meaning of section 174) paid or incurred by such foreign corporation during the taxable year and the preceding 2 taxable years. Any expenditure otherwise taken into account under the preceding sentence shall be reduced by the amount of any reimbursement received by the controlled foreign corporation with respect to such expenditure.

(2) Certain licensed intangibles

(A) In general

In the case of any intangible property (as defined in section 367(d)(4)) with respect to which a controlled foreign corporation is a licensee and which is used by such foreign corporation in the active conduct of a trade or business, the adjusted basis of the total assets of such foreign corporation shall be increased by an amount equal to 300 percent of the payments made during the taxable year by such foreign corporation for the use of such intangible property.

(B) Exceptions

Subparagraph (A) shall not apply to—

- (i) any payments to a foreign person if such foreign person is a related person (as defined in section 954(d)(3)) with respect to the controlled foreign corporation, and
- (ii) any payments under a license if a principal purpose of entering into such license was to avoid the provisions of this part.

(3) Controlled foreign corporation

For purposes of this subsection, the term “controlled foreign corporation” has the meaning given such term by section 957(a).

(f) Reporting requirement

Except as otherwise provided by the Secretary, each United States person who is a shareholder of a passive foreign investment company shall file an annual report containing such information as the Secretary may require.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part.

(Added Pub. L. 99-514, title XII, §1235(a), Oct. 22, 1986, 100 Stat. 2573, §1297; amended Pub. L. 100-647, title I, §1012(p)(10), (17), (20), (22), (24), (35), (36), Nov. 10, 1988, 102 Stat. 3517-3519, 3522; Pub. L. 101-239, title VII, §7811(i)(4), Dec. 19, 1989, 103 Stat. 2410; Pub. L. 103-66, title XIII, §13231(d)(2), (4), Aug. 10, 1993, 107 Stat. 499; Pub. L. 104-188, title I, §§1501(b)(10), (11), 1703(i)(5), (6), Aug. 20, 1996, 110 Stat. 1826, 1876; renumbered §1298 and amended Pub. L. 105-34, title XI, §1122(a), (e), Aug. 5, 1997, 111 Stat. 972, 977; Pub. L. 105-206, title VI, §6011(b)(2), July 22, 1998, 112 Stat. 818; Pub. L. 110-172, §11(a)(24)(C), (f)(2), Dec. 29, 2007, 121 Stat. 2487, 2489; Pub. L. 111-147, title V, §521(a), Mar. 18, 2010, 124 Stat. 112; Pub. L. 115-141, div. U, title IV, §401(a)(184)-(186), (d)(1)(D)(viii)(III), Mar. 23, 2018, 132 Stat. 1193, 1207.)

Editorial Notes

AMENDMENTS

2018—Subsec. (b)(5)(B). Pub. L. 115-141, §401(a)(184), substituted “section 951(c)” for “section 951(f)”.

Subsec. (d)(2)(A). Pub. L. 115-141, §401(a)(185), substituted “section 1297(a)(2)” for “section 1296(a)(2)”.

Subsec. (e)(2)(A). Pub. L. 115-141, §401(d)(1)(D)(viii)(III), substituted “section 367(d)(4)” for “section 936(h)(3)(B)”.

Subsec. (e)(2)(B)(ii). Pub. L. 115-141, §401(a)(186), substituted “provisions” for “provisons”.

2010—Subsecs. (f), (g). Pub. L. 111-147 added subsec. (f) and redesignated former subsec. (f) as (g).

2007—Subsec. (a)(2)(B). Pub. L. 110-172, §11(a)(24)(C), substituted “Section 1297(d)” for “Section 1297(e)”.

Subsec. (b)(7) to (9). Pub. L. 110-172, §11(f)(2), redesignated pars. (8) and (9) as (7) and (8), respectively, and struck out former par. (7) which read as follows: “Section 1246 shall not apply to earnings and profits of any company for any taxable year beginning after December 31, 1986, if such company is a passive foreign investment company for such taxable year.”

1998—Subsec. (a)(2)(B). Pub. L. 105-206 inserted at end “Section 1297(e) shall not apply in determining whether a corporation is a passive foreign investment company for purposes of this subparagraph.”

1997—Pub. L. 105-34, §1122(a), renumbered section 1297 of this title as this section.

Subsec. (b)(1). Pub. L. 105-34, §1122(e), inserted “(determined without regard to the preceding sentence)” after “investment company” in last sentence.

1996—Subsec. (b)(9). Pub. L. 104-188, §1501(b)(10), substituted “section 951(a)(1)(B)” for “subparagraph (B) or (C) of section 951(a)(1)”.

Subsec. (d)(2). Pub. L. 104-188, §1703(i)(5)(B), in heading substituted “Amount taken into account” for “Determination of adjusted basis”.

Subsec. (d)(2)(A). Pub. L. 104-188, §1703(i)(5)(A), substituted “The amount taken into account under section 1296(a)(2) with respect to any asset” for “The adjusted basis of any asset”.

Subsec. (d)(3)(B). Pub. L. 104-188, §1501(b)(11), struck out “or section 956A” after “this part”.

Subsec. (e). Pub. L. 104-188, §1703(i)(6), inserted “For purposes of this part—” after heading.

Subsec. (e)(2)(B)(ii). Pub. L. 104-188, §1501(b)(11), struck out “or section 956A” after “this part”.

1993—Subsec. (b)(9). Pub. L. 103-66, §13231(d)(2), added par. (9).

Subsecs. (d) to (f). Pub. L. 103-66, §13231(d)(4), added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

1989—Subsec. (b)(5). Pub. L. 101-239, §7811(i)(4)(A), substituted “where stock held” for “where held” in heading.

Subsec. (b)(5)(A). Pub. L. 101-239, §7811(i)(4)(C), substituted “treated as a disposition by, or distribution to” for “treated as a disposition to” in concluding provisions.

Subsec. (b)(5)(A)(ii). Pub. L. 101-239, §7811(i)(4)(B), substituted “any distribution of” for “any disposition of”.

1988—Subsec. (a)(4). Pub. L. 100-647, §1012(p)(10)(A), added par. (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 100-647, §1012(p)(10), redesignated par. (4) as (5) and substituted “paragraph (2), (3), or (4)” for “paragraph (2) or (3)”.

Subsec. (b)(1). Pub. L. 100-647, §1012(p)(36), substituted “investment company which” for “investment corporation which”.

Subsec. (b)(3)(A). Pub. L. 100-647, §1012(p)(22), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “such corporation (and any predecessor) was not a passive foreign investment corporation for any prior taxable year.”

Subsec. (b)(5). Pub. L. 100-647, §1012(p)(17), substituted “part where held” for “section where stock held” in heading, and amended text generally. Prior to amendment, text read as follows: “Under regulations, in any

case in which a United States person is treated as holding stock in a passive foreign investment company by reason of subsection (a), any disposition by the United States person or the person holding such stock which results in the United States person being treated as no longer holding such stock, shall be treated as a disposition by the United States person with respect to stock in the passive foreign investment company.”

Subsec. (b)(6). Pub. L. 100-647, §1012(p)(20), substituted “Except as provided in regulations, if a” for “If a”.

Subsec. (b)(8). Pub. L. 100-647, §1012(p)(24), added par. (8).

Subsecs. (c), (d). Pub. L. 100-647, §1012(p)(35), added subsec. (c) and redesignated former subsec. (c) as (d).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 11(f)(2) of Pub. L. 110-172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 11(f)(4) of Pub. L. 110-172, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to taxable years of United States persons beginning after Dec. 31, 1997, and to taxable years of foreign corporations ending with or within such taxable years of United States persons, see section 1124 of Pub. L. 105-34, set out as a note under section 532 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1501(b)(10), (11) of Pub. L. 104-188 applicable to taxable years of foreign corporations beginning after Dec. 31, 1996, and to taxable years of United States shareholders within which or with which such taxable years of foreign corporations end, see section 1501(d) of Pub. L. 104-188, set out as a note under section 904 of this title.

Amendment by section 1703(i)(5), (6) of Pub. L. 104-188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103-66, §§13001-13444, to which such amendment relates, see section 1703(o) of Pub. L. 104-188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103-66, set out as a note under section 951 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to taxable years of foreign corporations beginning after Dec. 31, 1986, see section

1235(h) of Pub. L. 99-514, set out as a note under section 1291 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by section 401(d)(1)(D)(viii)(III) of Pub. L. 115-141 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Mar. 23, 2018, for purposes of determining liability for tax for periods ending after Mar. 23, 2018, see section 401(e) of Pub. L. 115-141, set out as a note under section 23 of this title.

Subchapter Q—Readjustment of Tax Between Years and Special Limitations

Part

- I. Income averaging.
- II. Mitigation of effect of limitations and other provisions.
- [III, IV. Repealed.]
- V. Claim of right.
- [VI. Repealed.]
- VII. Recoveries of foreign expropriation losses.

Editorial Notes

AMENDMENTS

1997—Pub. L. 105-34, title IX, §933(b), Aug. 5, 1997, 111 Stat. 882, added item for part I.

1986—Pub. L. 99-514, title I, §141(c), Oct. 22, 1986, 100 Stat. 2117, struck out item for part I “Income averaging”.

1981—Pub. L. 97-34, title I, §101(c)(2)(C), Aug. 13, 1981, 95 Stat. 183, struck out item for part VI “Maximum rate on personal service income”.

1976—Pub. L. 94-455, title XIX, §§1901(b)(36)(E), (37)(F), 1951(c)(3)(D), Oct. 4, 1976, 90 Stat. 1802, 1803, 1841, struck out items for parts III and IV “Involuntary liquidation and replacement of LIFO inventories” and “War loss recoveries”, respectively, and substituted in item for part VI “Maximum rate on personal service income” for “Other limitations”.

1966—Pub. L. 89-384, §1(g)(1), Apr. 8, 1966, 80 Stat. 104, added item for part VII.

1964—Pub. L. 88-272, title II, §232(f)(3), Feb. 26, 1964, 78 Stat. 112, substituted “averaging” for “attributable to several taxable years” in item for part I.

PART I—INCOME AVERAGING

Sec.

- 1301. Averaging of farm income.

Editorial Notes

PRIOR PROVISIONS

A prior part I consisted of sections 1301 to 1305, prior to repeal by Pub. L. 99-514, title I, §141(a), Oct. 22, 1986, 100 Stat. 2117.

§ 1301. Averaging of farm income

(a) In general

At the election of an individual engaged in a farming business or fishing business, the tax imposed by section 1 for such taxable year shall be equal to the sum of—

- (1) a tax computed under such section on taxable income reduced by elected farm income, plus
- (2) the increase in tax imposed by section 1 which would result if taxable income for each of the 3 prior taxable years were increased by an amount equal to one-third of the elected farm income.

Any adjustment under this section for any taxable year shall be taken into account in applying this section for any subsequent taxable year.