

(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), and

(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.

(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.)

AMENDMENTS

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).

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.)

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).

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 qualified 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.)

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.

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.

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.