

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.)

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 acquir-

ing 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.”

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.

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.

(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 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,

(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.

(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.)

#### 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

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”.

#### 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—