

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), 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—