

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.

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.

§ 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.