

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.”

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