

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 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 com-

pany 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.

(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—