

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-647 substituted “paragraph (7)” for “paragraph (6)” in pars. (1) and (2).

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 ending after July 18, 1984, and applicable to obligations issued after Sept. 3, 1982, and acquired after Mar. 1, 1984, see section 44 of Pub. L. 98-369, set out as a note under section 1271 of this title.

PART VI—TREATMENT OF CERTAIN PASSIVE FOREIGN INVESTMENT COMPANIES

Subpart

- A. Interest on tax deferral.
- B. Treatment of qualified electing funds.
- C. Election of mark to market for marketable stock.
- D. General provisions.

AMENDMENTS

1997—Pub. L. 105-34, title XI, §1122(d)(6), Aug. 5, 1997, 111 Stat. 977, added items for subparts C and D and struck out former item for subpart C “General provisions”.

SUBPART A—INTEREST ON TAX DEFERRAL

Sec.

1291. Interest on tax deferral.

§ 1291. Interest on tax deferral**(a) Treatment of distributions and stock dispositions****(1) Distributions**

If a United States person receives an excess distribution in respect of stock in a passive foreign investment company, then—

(A) the amount of the excess distribution shall be allocated ratably to each day in the taxpayer’s holding period for the stock,

(B) with respect to such excess distribution, the taxpayer’s gross income for the current year shall include (as ordinary income) only the amounts allocated under subparagraph (A) to—

- (i) the current year, or
- (ii) any period in the taxpayer’s holding period before the 1st day of the 1st taxable year of the company which begins after December 31, 1986, and for which it was a passive foreign investment company, and

(C) the tax imposed by this chapter for the current year shall be increased by the deferred tax amount (determined under subsection (c)).

(2) Dispositions

If the taxpayer disposes of stock in a passive foreign investment company, then the rules of paragraph (1) shall apply to any gain recognized on such disposition in the same manner as if such gain were an excess distribution.

(3) Definitions

For purposes of this section—

(A) Holding period

The taxpayer’s holding period shall be determined under section 1223; except that—

(i) for purposes of applying this section to an excess distribution, such holding period shall be treated as ending on the date of such distribution, and

(ii) if section 1296 applied to such stock with respect to the taxpayer for any prior taxable year, such holding period shall be treated as beginning on the first day of the first taxable year beginning after the last taxable year for which section 1296 so applied.

(B) Current year

The term “current year” means the taxable year in which the excess distribution or disposition occurs.

(b) Excess distribution**(1) In general**

For purposes of this section, the term “excess distribution” means any distribution in respect of stock received during any taxable year to the extent such distribution does not exceed its ratable portion of the total excess distribution (if any) for such taxable year.

(2) Total excess distribution

For purposes of this subsection—

(A) In general

The term “total excess distribution” means the excess (if any) of—

(i) the amount of the distributions in respect of the stock received by the taxpayer during the taxable year, over

(ii) 125 percent of the average amount received in respect of such stock by the taxpayer during the 3 preceding taxable years (or, if shorter, the portion of the taxpayer’s holding period before the taxable year).

For purposes of clause (ii), any excess distribution received during such 3-year period shall be taken into account only to the extent it was included in gross income under subsection (a)(1)(B).

(B) No excess for 1st year

The total excess distributions with respect to any stock shall be zero for the taxable year in which the taxpayer’s holding period in such stock begins.

(3) Adjustments

Under regulations prescribed by the Secretary—

(A) determinations under this subsection shall be made on a share-by-share basis, except that shares with the same holding period may be aggregated,

(B) proper adjustments shall be made for stock splits and stock dividends,

(C) if the taxpayer does not hold the stock during the entire taxable year, distributions received during such year shall be annualized,

(D) if the taxpayer’s holding period includes periods during which the stock was held by another person, distributions re-