

since section 1245 overrides section 1231 (relating to property used in the trade or business), the gain recognized under section 1245(a)(1) upon a disposition will be treated as ordinary income and only the remaining gain, if any, from the disposition may be considered as gain from the sale or exchange of a capital asset if section 1231 is applicable. See example (2) of paragraph (b)(2) of § 1.1245-1. For effect of section 1245 on basis provisions of the Code, see § 1.1245-5.

(b) *Nonrecognition sections overridden.* The nonrecognition provisions of subtitle A of the Code which section 1245 overrides include, but are not limited to, sections 267(d), 311(a), 336, 337, 501(a), 512(b)(5), and 1039. See section 1245(b) for the extent to which section 1245(a)(1) overrides sections 332, 351, 361, 371(a), 374(a), 721, 731, 1031, 1033, 1071, and 1081 (b)(1) and (d)(1)(A). For limitation on amount of adjustments reflected in adjusted basis of property disposed of by an organization exempt from income taxes (within the meaning of section 501(a)), see paragraph (a)(8) of § 1.1245-2.

(c) *Normal retirement of asset in multiple asset account.* Section 1245(a)(1) does not require recognition of gain upon normal retirements of section 1245 property in a multiple asset account as long as the taxpayer's method of accounting, as described in paragraph (e)(2) of § 1.167(a)-8 (relating to accounting treatment of asset retirements), does not require recognition of such gain.

(d) *Installment method.* (1) Gain from a disposition to which section 1245(a)(1) applies may be reported under the installment method if such method is otherwise available under section 453 of the Code. In such case, the income (other than interest) on each installment payment shall be deemed to consist of gain to which section 1245(a)(1) applies until all such gain has been reported, and the remaining portion (if any) of such income shall be deemed to consist of gain to which section 1245(a)(1) does not apply. For treatment of amounts as interest on certain deferred payments, see section 483.

(2) The provisions of this paragraph may be illustrated by the following example:

Example: Jones contracts to sell an item of section 1245 property for \$10,000 to be paid in 10 equal payments of \$1,000 each, plus a sufficient amount of interest so that section 483 does not apply. He properly elects under section 453 to report under the installment method gain of \$2,000 to which section 1245(a)(1) applies and gain of \$1,000 to which section 1231 applies. Accordingly, \$300 of each of the first 6 installment payments and \$200 of the seventh installment payment is ordinary income under section 1245(a)(1), and \$100 of the seventh installment payment and \$300 of each of the last 3 installment payments is gain under section 1231.

(e) *Exempt income.* The fact that section 1245 provides for recognition of gain as ordinary income does not change into taxable income any income which is exempt under section 115 (relating to income of states, etc.), 892 (relating to income of foreign governments), or 894 (relating to income exempt under treaties).

(f) *Treatment of gain not recognized under section 1245.* Section 1245 does not prevent gain which is not recognized under section 1245 from being considered as gain under another provision of the Code, such as, for example, section 311(c) (relating to liability in excess of basis), section 341(f) (relating to collapsible corporations), section 357(c) (relating to liabilities in excess of basis), section 1238 (relating to amortization in excess of depreciation), or section 1239 (relating to gain from sale of depreciable property between certain related persons). Thus, for example, if section 1245 property, which has an adjusted basis of \$1,000 and a recomputed basis of \$1,500, is sold for \$1,750 in a transaction to which section 1239 applies, \$500 of the gain would be recognized under section 1245(a)(1) and the remaining \$250 of the gain would be treated as ordinary income under section 1239.

[T.D. 6832, 30 FR 8584, July 7, 1965, as amended by T.D. 7084, 36 FR 269, Jan. 8, 1971; T.D. 7400, 41 FR 5101, Feb. 4, 1976]

§ 1.1247-1 Election by foreign investment companies to distribute income currently.

(a) *Election by foreign investment company—(1) In general.* If a registered foreign investment company (as defined in paragraph (b) of this section) elects,

on or before December 31, 1962, with respect to each of its taxable years beginning after December 31, 1962, to comply with the requirements of subparagraph (2) of this paragraph, then section 1246 (relating to gain on foreign investment company stock) shall not apply with respect to a qualified shareholder (as defined in paragraph (b) of § 1.1247-3) of such company who disposes of his stock during any taxable year of the company to which such election applies. See section 1247(a)(1).

(2) *Requirements.* A registered foreign investment company which makes an election under section 1247(a) shall, with respect to each of its taxable years beginning after December 31, 1962, comply with the following requirements:

(i) Under section 1247(a)(1)(A), the company shall distribute to its shareholders, during the taxable year, 90 percent or more of what its taxable income would be for such taxable year if it were a domestic corporation. To the extent elected by the company under section 1247(a)(2)(B), a distribution of taxable income made not later than 2 months and 15 days after the close of the taxable year shall be treated as distributed during such taxable year. For rules relating to computation of taxable income for a taxable year and distributions of such taxable income, see § 1.1247-2.

(ii) Under section 1247(a)(1)(B), the company shall designate to each shareholder the amount of his pro rata share of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year and the amount thereof which is being distributed. For the manner of designating and the computation of such amounts, see § 1.1247-3.

(iii) Under section 1247(a)(1)(C), the company shall provide the information and maintain the records required by § 1.1247-5.

(b) *Definition of registered foreign investment company.* The term *registered foreign investment company* means a foreign corporation which is registered within the time specified in this paragraph under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 to 80b-2), either as a management company or as a unit investment trust.

Under such Act, a company is deemed registered upon receipt by the Securities and Exchange Commission of Form N-8A entitled *Notification of Registration Filed Pursuant to Section 8(a) of the Investment Company Act of 1940*. See section 8(a) of such Act (15 U.S.C. 80a-8(a)) and 17 CFR 274.10. A company which computes its income on the basis of a calendar year must have registered on or before December 31, 1962, and a company which computes its income on the basis of a fiscal year must have registered on or before the last day of its fiscal year beginning in 1962 and ending in 1963.

(c) *Time and manner of making election*—(1) *In general.* The election provided by paragraph (a) of this section must have been made on or before December 31, 1962, by means of a letter addressed to the Director of Internal Service, Washington, DC 20225, which clearly stated that the company elects to comply with the provisions of section 1247. The letter must have been signed by an officer of the foreign investment company who was a resident of the United States and who was duly authorized to act on behalf of the company.

(2) *Information furnished.* The following information must have been submitted in connection with the election:

(i) The name, address, and employer identification number, if any, and the taxable year of the company;

(ii) The principal place of business of the company;

(iii) The date and the country under whose laws the company was incorporated;

(iv) The date of filing with the Securities and Exchange Commission, and the file number, of Form N-8A;

(v) The names and addresses of all of the company's directors and officers and of any custodian or agent of the company located in the United States; and

(vi) The name and address of the person (or persons) in the United States having custody of the books of account, records, and other documents of the company, and the location of such books, records, and other documents if different from such address.

(3) *Time information furnished.* (i) If a foreign investment company was registered with the Securities and Exchange Commission on the date of election, all the information required by subparagraph (2) of this paragraph must have been submitted with the election.

(ii) If a foreign investment company made its election before it was so registered, the information required by subparagraph (2) (i), (ii), and (iii) of this paragraph must have been submitted with the election and the information required by subparagraph (2) (iv), (v), and (vi) of this paragraph must have been submitted within 60 days following receipt by the Securities and Exchange Commission of Form N-8A.

(d) *Termination of election*—(1) *General.* Section 1247(b) provides that the election of a foreign investment company under section 1247(a) shall permanently terminate as of the close of the taxable year preceding its first taxable year in which any of the following occurs:

(i) The company fails to comply with the provisions of section 1247(a)(1) (A), (B), or (C), unless it is shown that such failure is due to reasonable cause and not due to willful neglect;

(ii) The company is a foreign personal holding company as defined in section 552; or

(iii) The company ceases to be a registered foreign investment company which is described in paragraph (b) of this section. A company ceases to be a registered company, for example, as of the time the Securities and Exchange Commission revokes its order permitting registration of the company.

(2) *Reasonable cause.* Whether a failure by a foreign investment company to comply with the provisions of section 1247(a)(1) (A), (B), or (C) is due to reasonable cause and not due to willful neglect depends on whether the company exercised ordinary business care and prudence. For example, if in determining its taxable income under section 1247(a) the company relied in good faith upon estimates and opinions of independent certified public accountants or other experts which are also used for purposes of its financial statements filed with the Securities and Exchange Commission under the Invest-

ment Company Act of 1940, such reliance would constitute reasonable cause for purposes of this paragraph. In such a case, the company's election under section 1247(a) for the taxable year would not be terminated nor would the company be required to make an additional distribution for such taxable year in order to comply with the provisions of section 1247(a)(1)(A).

[T.D. 6798, 30 FR 1174, Feb. 4, 1965]

§ 1.1247-2 Computation and distribution of taxable income.

(a) *In general.* Taxable income of a foreign investment company means taxable income as defined in section 63(a), computed without regard to subchapter N, chapter 1 of the Code, and in accordance with the following rules:

(1) There shall be excluded the excess, if any, of the company's net long-term capital gain over the net short-term capital loss. See § 1.1247-3 for the manner of computing such excess.

(2) The deduction provided in section 172 (relating to net operating losses) shall not be allowed.

(3) Except for the deduction provided in section 248 (relating to organizational expenditures), the special deductions provided for corporations in part VIII (sections 241 and following), subchapter B, chapter 1 of the Code shall not be allowed.

(4) In computing the amount of the deduction allowed under section 164 there shall be included taxes paid or accrued during the taxable year which are imposed by the United States or by the country under the laws of which the company is created or organized. See, however, § 1.1247-4.

(b) *Election to distribute taxable income after close of taxable year.* A company may elect under section 1247(a)(2)(B), in respect of taxable income for a taxable year, to treat a distribution made not later than 2 months and 15 days after the close of such taxable year as a distribution made during such taxable year of such taxable income. The company shall make the election by attaching to the information return required by paragraph (c)(1) of § 1.1247-5 for such taxable year a statement setting forth the amount of each distribution (or portion thereof) to which the election applies and the date of each