

Editorial Notes**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 qualifying insurance corporation (as defined in subsection (f)),

(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.

(2) Qualified portion

For purposes of this subsection, the term “qualified portion” means the portion of the shareholder's holding period—

(A) which is after December 31, 1997, and

(B) during which the shareholder is a United States shareholder (as defined in section 951(b)) of the corporation and the corporation is a controlled foreign corporation.

(3) New holding period if qualified portion ends**(A) In general**

Except as provided in subparagraph (B), if the qualified portion of a shareholder's holding period with respect to any stock ends after December 31, 1997, solely for purposes of this part, the shareholder's holding period with respect to such stock shall be treated as beginning as of the first day following such period.

(B) Exception

Subparagraph (A) shall not apply if such stock was, with respect to such shareholder, stock in a passive foreign investment company at any time before the qualified portion of the shareholder's holding period with respect to such stock and no election under section 1298(b)(1) is made.

(4) Treatment of holders of options

Paragraph (1) shall not apply to stock treated as owned by a person by reason of section 1298(a)(4) (relating to the treatment of a person that has an option to acquire stock as owning such stock) unless such person establishes that such stock is owned (within the meaning of section 958(a)) by a United States shareholder (as defined in section 951(b)) who is not exempt from tax under this chapter.

(e) Methods for measuring assets**(1) Determination using value**

The determination under subsection (a)(2) shall be made on the basis of the value of the assets of a foreign corporation if—

(A) such corporation is a publicly traded corporation for the taxable year, or

(B) paragraph (2) does not apply to such corporation for the taxable year.

(2) Determination using adjusted bases

The determination under subsection (a)(2) shall be based on the adjusted bases (as determined for the purposes of computing earnings and profits) of the assets of a foreign corpora-

tion if such corporation is not described in paragraph (1)(A) and such corporation—

- (A) is a controlled foreign corporation, or
- (B) elects the application of this paragraph.

An election under subparagraph (B), once made, may be revoked only with the consent of the Secretary.

(3) Publicly traded corporation

For purposes of this subsection, a foreign corporation shall be treated as a publicly traded corporation if the stock in the corporation is regularly traded on—

- (A) a national securities exchange which is registered with the Securities and Exchange Commission or the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or
- (B) any exchange or other market which the Secretary determines has rules adequate to carry out the purposes of this subsection.

(f) Qualifying insurance corporation

For purposes of subsection (b)(2)(B)—

(1) In general

The term “qualifying insurance corporation” means, with respect to any taxable year, a foreign corporation—

- (A) which would be subject to tax under subchapter L if such corporation were a domestic corporation, and
- (B) the applicable insurance liabilities of which constitute more than 25 percent of its total assets, determined on the basis of such liabilities and assets as reported on the corporation’s applicable financial statement for the last year ending with or within the taxable year.

(2) Alternative facts and circumstances test for certain corporations

If a corporation fails to qualify as a qualified insurance corporation under paragraph (1) solely because the percentage determined under paragraph (1)(B) is 25 percent or less, a United States person that owns stock in such corporation may elect to treat such stock as stock of a qualifying insurance corporation if—

- (A) the percentage so determined for the corporation is at least 10 percent, and
- (B) under regulations provided by the Secretary, based on the applicable facts and circumstances—
 - (i) the corporation is predominantly engaged in an insurance business, and
 - (ii) such failure is due solely to runoff-related or rating-related circumstances involving such insurance business.

(3) Applicable insurance liabilities

For purposes of this subsection—

(A) In general

The term “applicable insurance liabilities” means, with respect to any life or property and casualty insurance business—

- (i) loss and loss adjustment expenses, and
- (ii) reserves (other than deficiency, contingency, or unearned premium reserves)

for life and health insurance risks and life and health insurance claims with respect to contracts providing coverage for mortality or morbidity risks.

(B) Limitations on amount of liabilities

Any amount determined under clause (i) or (ii) of subparagraph (A) shall not exceed the lesser of such amount—

- (i) as reported to the applicable insurance regulatory body in the applicable financial statement described in paragraph (4)(A) (or, if less, the amount required by applicable law or regulation), or
- (ii) as determined under regulations prescribed by the Secretary.

(4) Other definitions and rules

For purposes of this subsection—

(A) Applicable financial statement

The term “applicable financial statement” means a statement for financial reporting purposes which—

- (i) is made on the basis of generally accepted accounting principles,
- (ii) is made on the basis of international financial reporting standards, but only if there is no statement that meets the requirement of clause (i), or
- (iii) except as otherwise provided by the Secretary in regulations, is the annual statement which is required to be filed with the applicable insurance regulatory body, but only if there is no statement which meets the requirements of clause (i) or (ii).

(B) Applicable insurance regulatory body

The term “applicable insurance regulatory body” means, with respect to any insurance business, the entity established by law to license, authorize, or regulate such business and to which the statement described in subparagraph (A) is provided.

(Added Pub. L. 99-514, title XII, § 1235(a), Oct. 22, 1986, 100 Stat. 2572, § 1296; amended Pub. L. 100-647, title I, §§ 1012(p)(2), (5), (16), (26), (27), 1018(u)(40), Nov. 10, 1988, 102 Stat. 3515, 3518-3520, 3592; Pub. L. 103-66, title XIII, § 13231(d)(1), (3), Aug. 10, 1993, 107 Stat. 499; Pub. L. 104-188, title I, § 1704(r)(1), Aug. 20, 1996, 110 Stat. 1887; renumbered § 1297 and amended Pub. L. 105-34, title XI, §§ 1121, 1122(a), (d)(4), 1123, Aug. 5, 1997, 111 Stat. 971, 972, 977; Pub. L. 105-206, title VI, § 6011(b)(1), (d), July 22, 1998, 112 Stat. 817, 818; Pub. L. 110-172, § 11(a)(24)(A), (g)(18), Dec. 29, 2007, 121 Stat. 2486, 2491; Pub. L. 115-97, title I, § 14501(a), (b), Dec. 22, 2017, 131 Stat. 2234.)

Editorial Notes

REFERENCES IN TEXT

Section 11A of the Securities and Exchange Act of 1934, referred to in subsec. (e)(3)(A), is classified to section 78k-1 of Title 15, Commerce and Trade.

PRIOR PROVISIONS

A prior section 1297 was renumbered section 1298 of this title.

AMENDMENTS

2017—Subsec. (b)(2)(B). Pub. L. 115-97, § 14501(a), amended subpar. (B) generally. Prior to amendment,

subpar. (B) read as follows: “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.”.

Subsec. (f). Pub. L. 115-97, §14501(b), added subsec. (f). 2007—Subsec. (b)(2)(D). Pub. L. 110-172, §11(g)(18), which directed amendment of subpar. (D) by striking out “foreign trade income of a FSC or”, was executed by striking out “foreign trade income of an FSC or” before “export trade income” to reflect the probable intent of Congress.

Subsecs. (d) to (f). Pub. L. 110-172, §11(a)(24)(A), redesignated subsecs. (e) and (f) as (d) and (e), respectively, and struck out heading and text of former subsec. (d). Text read as follows: “For purposes of this part, the term ‘passive foreign investment company’ does not include any foreign investment company to which section 1247 applies.”

1998—Subsec. (e). Pub. L. 105-206, §6011(d), redesignated subsec. (e), relating to methods for measuring assets, as (f).

Subsec. (e)(4). Pub. L. 105-206, §6011(b)(1), added par. (4).

Subsec. (f). Pub. L. 105-206, §6011(d), redesignated subsec. (e), relating to methods for measuring assets, as (f).

1997—Pub. L. 105-34, §1122(a), renumbered section 1296 of this title as this section.

Subsec. (a). Pub. L. 105-34, §1123(b)(2), struck out concluding provisions which read as follows: “In the case of a controlled foreign corporation (or any other foreign corporation if such corporation so elects), the determination under paragraph (2) shall be based on the adjusted bases (as determined for purposes of computing earnings and profits) of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.”

Subsec. (a)(2). Pub. L. 105-34, §1123(b)(1), substituted “(as determined in accordance with subsection (e))” for “(by value)”.

Subsec. (b)(3). Pub. L. 105-34, §1122(d)(4), struck out par. (3) which consisted of subpars. (A) to (C) relating to treatment of certain dealers in securities.

Subsec. (e). Pub. L. 105-34, §1123(a), added subsec. (e) relating to methods for measuring assets.

Pub. L. 105-34, §1121, added subsec. (e) relating to exception for United States shareholders of controlled foreign corporations.

1996—Subsec. (b)(2)(D). Pub. L. 104-188 added subpar. (D).

1993—Subsec. (a). Pub. L. 103-66, §13231(d)(1), substituted in closing provisions “In the case of a controlled foreign corporation (or any other foreign corporation if such corporation so elects), the determination under paragraph (2) shall be based on the adjusted bases (as determined for purposes of computing earnings and profits) of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.” for “A foreign corporation may elect to have the determination under paragraph (2) based on the adjusted bases of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.”

Subsec. (b)(3). Pub. L. 103-66, §13231(d)(3), added par. (3).

1988—Subsec. (a). Pub. L. 100-647, §1018(u)(40), inserted a comma after “subpart”.

Pub. L. 100-647, §1012(p)(27), inserted at end “A foreign corporation may elect to have the determination under paragraph (2) based on the adjusted bases of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary.”

Subsec. (b)(1). Pub. L. 100-647, §1012(p)(5), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Except as provided in paragraph (2), the term ‘passive income’ has the meaning given such term by section 904(d)(2)(A) without regard to the exceptions contained in clause (iii) thereof.”

Subsec. (b)(2). Pub. L. 100-647, §1012(p)(26), substituted “Exceptions” for “Exception for certain banks and insurance companies” in heading, and inserted sentence at end defining “related person”.

Subsec. (b)(2)(B). Pub. L. 100-647, §1012(p)(16), inserted “is predominantly engaged in an insurance business and which” after “a corporation which”.

Subsec. (b)(2)(C). Pub. L. 100-647, §1012(p)(26)(A), added subpar. (C).

Subsec. (c). Pub. L. 100-647, §1012(p)(2), inserted “(directly or indirectly)” after “foreign corporation owns”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-97, title I, §14501(c), Dec. 22, 2017, 131 Stat. 2235, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2017.”

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 OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 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 a note under section 532 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, §1704(r)(2), Aug. 20, 1996, 110 Stat. 1887, provided that: “The amendments made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 1235 of the Tax Reform Act of 1986 [Pub. L. 99-514].”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable to taxable years of foreign corporations beginning after Sept. 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end, see section 13231(e) of Pub. L. 103-66, set out as a note under section 951 of this title.

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 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.

§ 1298. Special rules

(a) Attribution of ownership

For purposes of this part—

(1) Attribution to United States persons

This subsection—

(A) shall apply to the extent that the effect is to treat stock of a passive foreign investment company as owned by a United States person, and

(B) except to the extent provided in regulations, shall not apply to treat stock owned (or treated as owned under this subsection)