

initial investment of greater than \$10,000 (U.S.);

(iii) At all times during the calendar year, quotations for the class of shares of the foreign corporation are determined and published no less frequently than on a weekly basis in a widely-available permanent medium not controlled by the issuer of the shares, such as a newspaper of general circulation or a trade publication;

(iv) No less frequently than annually, independent auditors prepare financial statements of the foreign corporation that include balance sheets (statements of assets, liabilities, and net assets) and statements of income and expenses, and those statements are made available to the public;

(v) The foreign corporation is supervised or regulated as an investment company by a foreign government or an agency or instrumentality thereof that has broad inspection and enforcement authority and effective oversight over investment companies;

(vi) At all times during the calendar year, the foreign corporation has no senior securities authorized or outstanding, including any debt other than in de minimis amounts;

(vii) Ninety percent or more of the gross income of the foreign corporation for its taxable year is passive income, as defined in section 1297(a)(1) and the regulations thereunder; and

(viii) The average percentage of assets held by the foreign corporation during its taxable year which produce passive income or which are held for the production of passive income, as defined in section 1297(a)(2) and the regulations thereunder, is at least 90 percent.

(2) *Anti-abuse rule.* If a foreign corporation undertakes any actions that have as one of their principal purposes the manipulation of the net asset value of a class of its shares, for the calendar year in which the manipulation occurs, the shares are not marketable stock for purposes of paragraph (d)(1) of this section.

(e) [Reserved]

(f) *Special rules for regulated investment companies (RICs)*—(1) *General rule.* In the case of any RIC that is offering for sale, or has outstanding, any stock of which it is the issuer and which is

redeemable at net asset value, if the RIC owns directly or indirectly, as defined in sections 958(a)(1) and (2), stock in any passive foreign investment company, that stock will be treated as marketable stock owned by that RIC for purposes of section 1296. Except as provided in paragraph (f)(2) of this section, in the case of any other RIC that publishes net asset valuations at least annually, if the RIC owns directly or indirectly, as defined in sections 958(a)(1) and (2), stock in any passive foreign investment company, that stock will be treated as marketable stock owned by that RIC for purposes of section 1296.

(2) [Reserved]

(g) *Effective date.* This section applies to shareholders whose taxable year ends on or after January 25, 2000 for stock in a foreign corporation whose taxable year ends with or within the shareholder's taxable year. In addition, shareholders may elect to apply these regulations to any taxable year beginning after December 31, 1997, for stock in a foreign corporation whose taxable year ends with or within the shareholder's taxable year.

[T.D. 8867, 65 FR 3819, Jan. 25, 2000]

**§ 1.1297-0 Table of contents.**

This section contains a listing of the headings for § 1.1297-3T.

*§ 1.1297-3T Deemed sale election by a United States person that is a shareholder of a passive foreign investment company.*

(a) In general.

(b) Time and manner for making the election.

(1) In general.

(2) Information to be included in the election.

(3) Adjustment to basis; treatment of holding period.

[T.D. 8750, 63 FR 13, Jan. 2, 1998]

**§ 1.1297-3T Deemed sale election by a United States person that is a shareholder of a passive foreign investment company (temporary).**

(a) *In general.* Except as indicated below, a shareholder of a foreign corporation that no longer qualifies as a passive foreign investment company (PFIC) shall be treated for tax purposes as holding stock in a PFIC and therefore continue to be subject to taxation

under section 1291 unless the shareholder makes the election under section 1297(b)(1). This continuing PFIC taint shall not apply to stock in a PFIC for which an election under section 1295 to be a qualified electing fund (QEF) has been in effect throughout that portion of the shareholder's holding period during which the PFIC qualified as a PFIC. A U.S. person making the election under section 1297(b)(1) shall be treated as having sold its stock in the PFIC on the last day of the last taxable year of the foreign corporation during which it qualified as a PFIC (termination date). The shareholder thereafter shall not be treated as holding stock in a PFIC and shall not be subject to taxation under section 1291. The deemed sale is taxed as a disposition under section 1291. Pursuant to that section, the gain, if any, is considered earned pro rata over the shareholder's holding period in the stock and is taxed as ordinary income. The tax on the gain is based on the value of the tax deferral and includes an interest charge. Any loss realized in the deemed sale may not be recognized. This section provides rules for making the election under section 1297(b)(1). The election is available to a U.S. person that is a shareholder of a foreign corporation if—

(1) The foreign corporation was a PFIC at any time during the period the U.S. person held the stock;

(2) At any one time during the U.S. person's holding period, the foreign corporation qualified as a PFIC but was not a QEF; and

(3) The foreign corporation is no longer a PFIC within the meaning of section 1296.

(b) *Time and manner of making the election*—(1) *In general.* The shareholder shall make the election under this section and section 1297(b)(1) by filing an amended income tax return for its taxable year that includes the termination date within three years of the due date, as extended, for the shareholder's tax return for such taxable year. The shareholder must attach to the amended tax return either Form 8621 or a statement, prepared in accordance with paragraph (c)(2) of this section, reporting the gain on the deemed sale of the stock as required by section 1291(a)(2)

(as if such deemed sale occurred under section 1291(a)(2)), and by paying the tax on the gain as required by section 1291 (including the payment of the deferred tax amount required under sections 1291(a)(1)(C) and 1291(c)). The electing shareholder also shall pay interest, pursuant to section 6601, on the underpayment of tax for the taxable year of termination. An electing shareholder that realizes a loss shall report the loss on Form 8621, but shall not recognize the loss.

(2) *Information to be included in the election.* If a statement is used, the statement should be identified, in a heading, as an election under section 1297(b)(1). The statement must include the following information and representations:

(i) The name, address and taxpayer identification number of the electing shareholder;

(ii) The name, address and taxpayer identification number, if any, of the PFIC;

(iii) A statement that the shareholder is making the election under section 1297(b)(1);

(iv) The period in the electing shareholder's holding period in the stock during which the foreign corporation was a PFIC, the period during which it was a QEF (and whether the shareholder elected under section 1294 to defer payment of its tax liability attributable to any portion of such period), and the termination date;

(v) The manner in which the PFIC lost the characteristics of a PFIC;

(vi) A schedule listing the shares in the PFIC held by the electing shareholder on the termination date, listing the date(s) each share or block of shares was acquired, the number of shares acquired on each date listed, and the tax basis of each share;

(vii) The fair market value of the stock in the PFIC on the termination date; for this purpose, the fair market value of the stock shall be determined according to the rules of § 1.1295-1T(b)(9); and

(viii) A schedule showing the computation of the gain recognized on the deemed sale, and a calculation of the deferred tax amount, as defined in section 1291(c).

### § 1.1311(a)-1

(3) *Adjustment to basis; treatment of holding period.* An electing shareholder that recognizes gain on the deemed sale of stock shall increase its adjusted basis in the stock by the amount of gain recognized. An electing shareholder shall not adjust the basis in stock with respect to which the shareholder realized a loss on the deemed sale. An electing shareholder shall thereafter treat its holding period in the stock, for purposes of sections 1291 through 1297, as beginning on the day following the termination date without regard to whether it recognized gain on the deemed sale; for section 1223 purposes, the holding period in the stock in the PFIC shall include the period prior to the deemed sale.

(c) *Application of deemed dividend election rules—(1) In general.* A shareholder of a former PFIC, within the meaning of § 1.1291-9(j)(2)(iv), that was a controlled foreign corporation, within the meaning of section 957(a) (CFC), during its last taxable year as a PFIC under section 1296(a), may apply the rules of section 1291(d)(2)(B) and § 1.1291-9 to an election under section 1297(b)(1) and this section made by the time and in the manner provided in paragraph (b) of this section.

(2) *Transition rule.* If the time for making an election under this section, as provided in paragraph (b) of this section, expired before January 2, 1998, a shareholder that applied rules similar to the rules of section 1291(d)(2)(A) and § 1.1291-10 to an election under this section made with respect to a corporation that was a CFC during its last taxable year as a PFIC under section 1296(a) may file an amended return for the taxable year that includes the termination date, as defined in paragraph (a) of this section, and apply the rules of section 1291(d)(2)(B) and § 1.1291-9 at any time before the expiration of the period of limitations for the assessment of taxes for that taxable year.

(3) *Effective date.* The rules of this paragraph are effective as of January 2, 1998.

[T.D. 8178, 53 FR 6779, Mar. 2, 1988, as amended by T.D. 8750, 63 FR 24, Jan. 2, 1998]

### 26 CFR Ch. I (4-1-01 Edition)

#### READJUSTMENT OF TAX BETWEEN YEARS AND SPECIAL LIMITATIONS

#### MITIGATION OF EFFECT OF LIMITATIONS AND OTHER PROVISIONS

#### § 1.1311(a)-1 Introduction.

(a) Part II (section 1311 and following), subchapter Q, chapter 1 of the Code, provides certain rules for the correction of the effect of an erroneous treatment of an item in a taxable year which is closed by the statute of limitations or otherwise, in cases where, in connection with the ascertainment of the tax for another taxable year, it has been determined that there was an erroneous treatment of such item in the closed year.

(b) In most situations falling within this part the correction of the effect of the error on a closed year can be made only if either the Commissioner or the taxpayer has taken a position in another taxable year which is inconsistent with the erroneous treatment of the item in the closed year. If a refund or credit would result from the correction of the error in the closed year, then the Commissioner must be the one maintaining the inconsistent position. For example, if the taxpayer erroneously included an item of income on his return for an earlier year which is now closed and the Commissioner successfully requires it to be included in a later year, then the correction of the effect of the erroneous inclusion of that item in the closed year may be made since the Commissioner has maintained a position inconsistent with the treatment of such item in such closed year. On the other hand, if an additional assessment would result from the correction of the error in the closed year, then the taxpayer must be the one maintaining the inconsistent position. For example, if the taxpayer deducted an item in an earlier year which is now closed and he successfully contends that the item should be deducted in a later year, then the correction of the effect of the erroneous deduction of that item in the closed year may be made since the taxpayer has taken a position inconsistent with the treatment of such item in such earlier year.