

Internal Revenue Code Section 1297(b)(1)

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 corporation 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.