Section 1296: PFIC Mark to Market ("MTM") Election

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Diagram: This flowchart has been extensively reviewed to be complete and accurate as possible. However, due to the complexity of these rules, this flowchart undoubtedly contains omissions. You should consult a tax professional for individual advice regarding your own situation. This flowchart is not updated for changes in the tax laws and should not be relied upon for any purpose whatsoever.

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Marketable Stock (-2)
- Was the stock marketable stock? Generally, stock is marketable if it is traded on a regulated national securities exchange?
  - Yes
    - No Election Allowed
    - A Section 1296 mark-to-market (MTM) election cannot be made.
  - No
    - Proceed to step 1.

Acquired from Decedent C-1(0)(4)
- Was the stock acquired from a decedent, deceased, or inheritance tax events? If so, was the decedent's death before or after December 1, 2010?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

No Election Allowed
- A Section 1296 mark-to-market (MTM) election cannot be made.

Carryover Basis
- Was the basis of the stock in the hands of the person acquiring it subject to the rules generally applicable to transferors of property (as if the transferor had died at the time of the transfer)?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Acquired by Foreign Grantor Trust (-1)(o)
- Was the stock acquired by a foreign grantor trust or foreign trust described in sections 671 through 679?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Owned by Foreign Grantor Trust or Estate (-1)(o)
- Was the stock owned, directly or indirectly, by a foreign grantor trust or foreign trust described in sections 671 through 679?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Treated as Owned By Fgn P’ship,ellarry (Loss)
- Did the taxpayer sell or otherwise dispose of the stock for less than its adjusted basis?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Sale By the Entity (3)(1)
- Did the taxpayer sell or otherwise dispose of the stock for less than its adjusted basis?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Sale Of the Entity (1)(o)
- Did the taxpayer sell or otherwise dispose of the stock for less than its adjusted basis?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Treat the disposition as a disposition by
- The mark to market rules do not apply to a disposition by a U.S. person of its interests in a CFC when the CFC does not meet the marking requirement.

Sale of MTM Stock
- Did the taxpayer sell or otherwise dispose of the stock for less than its adjusted basis?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

LTM Election Retained
- Will the tax shelter be treated as a tax shelter with respect to an interest in a foreign partnership or as an equity interest in a QEF?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

PFIC During the Year (-1)(2)(2)
- Did the foreign corporation be a PFIC under Code §1297 or treated as a PFIC under Code §1291 during the taxable year?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

PFIC - Was the foreign corporation a PFIC under Code §1297 or treated as a PFIC under Code §1291 during the taxable year?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

PFIC in Prior Year QEF in All Prior Years
- Was the foreign corporation treated as a qualified foreign entity (QEF) in all prior years?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Ord. Inc. / FPHCI
- Is the foreign corporation a personal holding company (PHC) for the year?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Ord. Loss / FPHCI
- Is the foreign corporation a personal holding company (PHC) for the year?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Ord. Loss Rules (Typically Capital)
- Is the loss subject to the normal rules described in sections 1291 through 1293 or the regulations thereunder, typically resulting in a capital loss?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Part Ord. Loss & Part Normal Loss (Typically Capital)
- Is the loss subject to ordinary income rules that do not allow the entire loss to be treated as a capital loss?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Loss > Unrev’d
- Did the loss on the disposition exceed the unreversed inclusions?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Loss is Partly Allowed
- Did the loss on the disposition exceed the unreversed inclusions?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Loss is Full Ordinary Loss
- Did the loss on the disposition exceed the unreversed inclusions?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

No Loss Unrecognized
- Did the taxpayer make a timely election to mark to market the stock?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Unrecognized Inclusion
- Did the taxpayer make a timely election to mark to market the stock?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

No Loss Inclusion
- Did the taxpayer make a timely election to mark to market the stock?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Loss is Partially Allowed
- Did the taxpayer make a timely election to mark to market the stock?
  - Yes
    - Proceed to step 1.
  - No
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No Loss Unrecognized
- Did the taxpayer make a timely election to mark to market the stock?
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  - No
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Ord. Loss / PHC
- Is the foreign corporation a personal holding company (PHC) for the year?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Loss is Partially Allowed
- Did the taxpayer make a timely election to mark to market the stock?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Decrease Basis
- Did the taxpayer make a timely election to mark to market the stock?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Basis thru Entities (-1)(c)
- Did the taxpayer make a timely election to mark to market the stock?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Sale of PFIC (-1)(o)
- Did the taxpayer sell or otherwise dispose of the stock for less than its adjusted basis?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Gain (Typically Capital)
- Is the gain on the disposition of the stock a capital gain?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Ord. Inc./ FPHCI
- Is the foreign corporation a personal holding company (PHC) for the year?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Ord. Inc. / FPHCI
- Is the foreign corporation a personal holding company (PHC) for the year?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Late election relief
- Did the taxpayer make a timely election to mark to market the stock?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Unrecognized Inclusion
- Did the taxpayer make a timely election to mark to market the stock?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Yes
- Was the loss treated as ordinary loss to the extent of unreversed inclusions? Thereafter, the loss is treated as a capital loss.

Loss is Full Ordinary Loss
- Did the loss exceed the unreversed inclusions?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Loss is Partly Allowed
- Did the loss exceed the unreversed inclusions?
  - Yes
    - Proceed to step 1.
  - No
    - Proceed to step 1.

Loss > Unrev’d
- Did the loss exceed the unreversed inclusions?
  - Yes
    - Proceed to step 1.
  - No
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- Did the loss exceed the unreversed inclusions?
  - Yes
    - Proceed to step 1.
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- Did the loss exceed the unreversed inclusions?
  - Yes
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Decrease Basis
- Did the loss exceed the unreversed inclusions?
  - Yes
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Basis thru Entities (-1)(o)
- Did the taxpayer make a timely election to mark to market the stock?
  - Yes
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