Copyright © 2015-2017, Andrew Mitchel LLC Section 1296: PFIC Mark to Market ("MTM") Election Last Updated April 10, 2017 Start Tax-Charts.com Marketable Stock (-2) No Election Allowed A Section 1296 mark-to-market Was the stock marketable stock? Generally tock is marketable if it is traded on a regulated ("MTM") election cannot be made national securities exchange. Acquired from Carryover Basis Decedent (-1(d)(4)) Was stock acquired by bequest, devise, or inheritance The basis of the stock in the hands of the person acquiring it is the adjusted basis of the stock in the hands of the decedent immediately before his death (or, if lesser, the asis which would have been determined under section 1014 without regard to this rule) or by the decedent's estate), where a Sec. 1296 electio was in effect as of the date of the decedent's death? Sec. 1296(i), Reg. 1.1296-1(d)(4) Sec. 1296(i), Reg. 1.1296-1(d)(4) Owned by Foreign Grantor Trust (-1(e)) Owned by Grantors/Owners of Trust This flowchart does not The stock is considered as being owned proportionately by its grantors or other persons treated as owners under sections 671 through 679. /as the PFIC stock owned, directly or indirectly, consider the special rules by or for a foreign grantor trust (a foreign that apply to U.S. regulated trust described in sections 671 through 679)? Reg 1 1296-1(e)(1) investment companies. Reg. 1.1296-1(e)(1) Owned By Fgn P'Ship, Proportionate Ownership Trust, or Estate (-1(e)) Was the PFIC stock owned directly or indirectly, by or for a foreign partnership, foreign trust (other than a foreign trust The stock is treated as being owned oportionately by its partners or beneficiaries described in sections 671 through 679), or foreign estate Sec. 1296(a) Reg. 1.1296-1(e)(1) Sec. 1296(q) Reg. 1.1296-1(e)(1) U.S. Owner (-1(b)) **CFC Owner** MTM is N/A Was the PFIC stock owned by, or Was the PFIC stock owned by, or treated as he mark to market rule: owned (under the rules in the preceding boxes by, a controlled foreign corporation ("CFC")? treated as owned (under the rules in the preceding boxes) by, a U.S. person' respect to this stock. Reg. 1.1296-1(b)(1) Late election relief Timely Election (-1(h)) **Timely Election** may be available under Reg. 301.9100-3. Did the U.S. person make a MTM election on a Form 8621 Did the controlling U.S. shareholders (as defined in Reg. 1296-1(h)(1)(iii) included with the original tax return of the U.S. person for Reg. §1.964-1(c)(5) make a MTM election included with Form 5471 for the CFC before the due date that year, or on an amended return filed before the due date (including extensions) of such person's tax return? cluding extensions) of such shareholder's tax returns? Reg. 1.1296-1(h)(1)(ii) Reg. 1.1296-1(h)(1)(i) Applies to all of the The election is binding on all U.S. S/H's Stock in the FC shareholders (as defined in Sec. 951(b)) (-1(b)(3)) Reg. 1.1296-1(h)(1)(ii) The election applies to all of the taxpayer's stock in the foreign Reg. 1.1296-1(b)(3) Apply Sec. 1291 Excess Distrib'n Rules First Year of **QEF in All Prior Years** Apply the rules of Sec. 1291 to any distributions with Election (-1(i)) PFIC in Prior Year spect to, or disposition of, the stock. Apply Sec. 1291 Was this the first taxable year Was the foreign corporation a Was the foreign corporation to the amount of the excess, if any, of the fair market PFIC for any prior taxable treated as a QEF for all value of the stock on the last day of the U.S. person's taxable year over its adjusted basis, as if such election was effective? ear during the U.S. person's prior taxable years during the U.S. person's holding period in the stock? mount were gain recognized from the disposition of Sec. 1296(j)(1) Reg. 1.1296-1(i)(1) Sec. 1296(j)(1) Sec. 1296(i)(1) Yes stock on the last day of the taxpayer's taxable year Reg. 1.1296-1(i)(1) and increase the adjusted basis in the stock by the mount of the excess, if any, subject to section 1291. Became a U.S. Sec. 1296(j)(1), Reg. 1.1296-1(j)(2) **FMV Basis for MTM Purposes** Person (-1(d)(5)) Did the taxpayer become a United Solely for purposes of computing MTM inclusions (and not for purposes of computing gain or loss on States person in the taxable year? disposition), the adjusted basis, before any MTM adjustments, of MTM stock owned by the individual on the firs day of the taxable year is treated as being the greater of its fair market value or its adjusted basis on the first The example in the regulations provides that pre-residency appreciation is taxed as long-term capital gain. Reg. 1.1296-1(d)(5)(i) Sec. 1296(I), Reg. 1.1296-1(d)(5)(i), (ii) Example No Longer Marketable (-1(h)(3)) Election Terminated / 1291 Fund Did the PFIC stock cease to be The MTM election is terminated effective the beginning of the taxable year. The PFIC is treated as a 1291 fund for the year. Reg. 1.1296-1(h)(3)(i) Other MTM Rea. 1.1296-1(h)(3)(ii) Rule (-1(h)(3)) Did the person elect, or was required to elect, to mark to market the PFIC stock under another provision of Chapter 1 of the Code during the taxable year? Reg. 1.1296-1(h)(3)(i) IRS Consent To Revoke (-1(h)(3)) Election Terminated / 1291 Fund Did the IRS consent to the taxpayer's request to revoke the MTM he MTM election is terminated effective the irst taxable year after the consent is given (which may include a foreign corporation ceasing to be a PFIC)? unless otherwise provided by the IRS. Reg. 1.1296-1(h)(3)(ii) Sec. 1296(k) Rea. 1.1296-1(h)(3)(i) Apply the following rules for the last year the election is in effect.

Disclaimer

This flowchart has been extensively reviewed to be as complete and accurate as possible. However, due to the complexity of these rules, this flowchart undoubtedly includes errors and 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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