

Application of Section 1.1295-1T(b)(4), (f), and (g) to Taxable Years Beginning Before January 1, 1998

Notice 98-22

This notice provides guidance to direct or indirect shareholders of passive foreign investment companies (PFICs), as defined in section 1297 of the Internal Revenue Code, concerning the effective date of § 1.1295-1T(b)(4), (f), and (g) of the temporary regulations published in the **Federal Register** on January 2, 1998, as T.D. 8750. As described below, final regulations under section 1295 will permit shareholders of PFICs to apply the rules of § 1.1295-1T(b)(4), the rules of § 1.1295-1T(f) and (g), or both sets of rules to a taxable year beginning before January 1, 1998, for which the period of limitations has not run as of the date of publication of this notice, provided that, in the case of § 1.1295-1T(b)(4), the shareholders consistently apply the rules to all subsequent taxable years.

BACKGROUND

Section 1.1295-1T(b)(4) of the temporary regulations provides rules concerning a section 1295 election made by a taxpayer in a joint return under section 6013. Section 1.1295-1T(f) and (g) provide simplified rules concerning the manner of making and maintaining a section 1295 election to treat a PFIC as a qualified electing fund (QEF). Prior to the publication of § 1.1295-1T(f) and (g), Notice 88-125, 1988-2 C.B. 535, provided such guidance. Under § 1.1295-1T(k), § 1.1295-1T(b)(4), (f), and (g) is effective for taxable years of shareholders beginning after December 31, 1997.

APPLICATION TO EARLIER TAXABLE YEARS

Commenters have requested that § 1.1295-1T(b)(4) apply on an elective basis to taxable years beginning before January 1, 1998, to provide taxpayers certainty with respect to elections made on joint returns for such years. Commenters also requested that § 1.1295-1T(f) and (g) apply on an elective basis to taxable years

beginning before January 1, 1998, to enable taxpayers to use the simplified reporting procedures for 1997. In response to these comments, the final regulations will permit taxpayers to apply the rules of temporary regulations § 1.1295-1T(b)(4), the rules of § 1.1295-1T(f) and (g), or both sets of rules, to a taxable year beginning before January 1, 1998, for which the statute of limitations on the assessment of tax has not expired as of the date of publication of this notice. Taxpayers that filed a joint return in which the section 1295 election was made may only apply the rules of § 1.1295-1T(b)(4) if they have consistently applied the rules of that section to all taxable years following the year in which the election was made and for which the statute of limitations for the assessment of tax is open. Subject to this consistency requirement, the rule of § 1.1295-1T(b)(4) may be applied to any open year even if the section 1295 election was made in a year for which the statute of limitations has expired. No action other than treatment consistent with an effective section 1295 election is necessary for the section 1295 election to be treated as made by both spouses.

PAPERWORK REDUCTION ACT

The collections of information requirements contained in the temporary regulations to which this notice applies were reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1555.

FOR FURTHER INFORMATION CONTACT Teresa Hughes at (202) 622-3840 (not a toll-free call).