

and prudence. For example, if in determining its taxable income under section 1247(a) the company relied in good faith upon estimates and opinions of independent certified public accountants or other experts which are also used for purposes of its financial statements filed with the Securities and Exchange Commission under the Investment Company Act of 1940, such reliance would constitute reasonable cause for purposes of this paragraph. In such a case, the company's election under section 1247(a) for the taxable year would not be terminated nor would the company be required to make an additional distribution for such taxable year in order to comply with the provisions of section 1247(a)(1)(A).

[T.D. 6798, 30 FR 1174, Feb. 4, 1965]

§ 1.1247-2 Computation and distribution of taxable income.

(a) *In general.* Taxable income of a foreign investment company means taxable income as defined in section 63(a), computed without regard to subchapter N, chapter 1 of the Code, and in accordance with the following rules:

(1) There shall be excluded the excess, if any, of the company's net long-term capital gain over the net short-term capital loss. See § 1.1247-3 for the manner of computing such excess.

(2) The deduction provided in section 172 (relating to net operating losses) shall not be allowed.

(3) Except for the deduction provided in section 248 (relating to organizational expenditures), the special deductions provided for corporations in part VIII (sections 241 and following), subchapter B, chapter 1 of the Code shall not be allowed.

(4) In computing the amount of the deduction allowed under section 164 there shall be included taxes paid or accrued during the taxable year which are imposed by the United States or by the country under the laws of which the company is created or organized. See, however, § 1.1247-4.

(b) *Election to distribute taxable income after close of taxable year.* A company may elect under section 1247(a)(2)(B), in respect of taxable income for a taxable year, to treat a distribution made not later than 2 months and 15 days after the close of such taxable year as

a distribution made during such taxable year of such taxable income. The company shall make the election by attaching to the information return required by paragraph (c)(1) of § 1.1247-5 for such taxable year a statement setting forth the amount of each distribution (or portion thereof) to which the election applies and the date of each such distribution. The election shall be irrevocable after the expiration of the time for filing such information return. The distribution (or portion thereof) to which the election applies shall be considered as paid out of the earnings and profits of the taxable year for which such election is made, and not out of the earnings and profits of the taxable year in which the distribution is actually made. A distribution to which this paragraph applies shall be includable in the gross income of a shareholder of the foreign investment company for his taxable year in which received or accrued.

[T.D. 6798, 30 FR 1175, Feb. 4, 1965]

§ 1.1247-3 Treatment of capital gains.

(a) *Treatment by the company—(1) In general.* If an election to distribute income currently pursuant to section 1247(a) is in effect for a taxable year of a foreign investment company, the company shall designate (in the manner described in subparagraph (3) of this paragraph) to each shareholder his pro rata amount of the excess of the net long-term capital gain over the net short-term capital loss for the company's taxable year, and the portion thereof which is being distributed to each such shareholder. See section 1247(a)(1)(B). Except as provided in subparagraph (2) of this paragraph, the company shall compute such excess (hereinafter referred to as *excess capital gains*) as if such company were a domestic corporation, but without regard to subchapter N, chapter 1 of the Code. See paragraph (d) of § 1.1247-1 for rules relating to termination of election under section 1247(a) for failure to properly compute or to properly designate excess capital gains. A company may make an irrevocable election (by notifying its shareholders as provided in subparagraph (3) of this paragraph) to distribute, on or before the 45th day following the close of its taxable year,