

Internal Revenue Code Section 1256(e)(3)(B)

Section 1256 contracts marked to market

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(e) Mark to market not to apply to hedging transactions.

(1) Section not to apply.

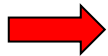
Subsection (a) shall not apply in the case of a hedging transaction.

(2) Definition of hedging transaction.

For purposes of this subsection , the term "hedging transaction" means any hedging transaction (as defined in section 1221(b)(2)(A)) if, before the close of the day on which such transaction was entered into (or such earlier time as the Secretary may prescribe by regulations), the taxpayer clearly identifies such transaction as being a hedging transaction.

(3) Special rule for syndicates.

(A) In general. Notwithstanding paragraph (2) , the term "hedging transaction" shall not include any transaction entered into by or for a syndicate.



(B) Syndicate defined. For purposes of subparagraph (A) , the term "syndicate" means any partnership or other entity (other than a corporation which is not an S corporation) if more than 35 percent of the losses of such entity during the taxable year are allocable to limited partners or limited entrepreneurs (within the meaning of section 461(k)(4)).

(C) Holdings attributable to active management. For purposes of subparagraph (B) , an interest in an entity shall not be treated as held by a limited partner or a limited entrepreneur (within the meaning of section 461(k)(4))-

(i) for any period if during such period such interest is held by an individual who actively participates at all times during such period in the management of such entity,

(ii) for any period if during such period such interest is held by the spouse, children, grandchildren, and parents of an individual who actively participates at all times during such period in the management of such entity,

(iii) if such interest is held by an individual who actively participated in the management of such entity for a period of not less than 5 years,

(iv) if such interest is held by the estate of an individual who actively participated in the management of such entity or is held by the estate of an individual if with respect to such individual such interest was at any time described in clause (ii) , or

(v) if the Secretary determines (by regulations or otherwise) that such interest should be treated as held by an individual who actively participates in the management of such entity, and that such entity and such interest are not used (or to be used) for tax-avoidance purposes.

For purposes of this subparagraph , a legally adopted child of an individual shall be treated as a child of such individual by blood.

(4) Limitation on losses from hedging transactions.

(A) In general.

(i) Limitation. Any hedging loss for a taxable year which is allocable to any limited partner or limited entrepreneur (within the meaning of paragraph (3)) shall be allowed only to the extent of the taxable income of such limited partner or entrepreneur for such taxable year attributable to the trade or business in which the hedging transactions were entered into. For purposes of the preceding sentence, taxable income shall be determined by not taking into account items attributable to hedging transactions.

(ii) Carryover of disallowed loss. Any hedging loss disallowed under clause (i) shall be treated as a deduction attributable to a hedging transaction allowable in the first succeeding taxable year.

(B) Exception where economic loss. Subparagraph (A)(i) shall not apply to any hedging loss to the extent that such loss exceeds the aggregate unrecognized gains from hedging transactions as of the close of the taxable year attributable to the trade or business in which the hedging transactions were entered into.

(C) Exception for certain hedging transactions. In the case of any hedging transaction relating to property other than stock or securities, this paragraph shall apply only in the case of a taxpayer described in section 465(a)(1) .

(D) Hedging loss. The term "hedging loss" means the excess of-

(i) the deductions allowable under this chapter for the taxable year attributable to hedging transactions (determined without regard to subparagraph (A)(i)), over

(ii) income received or accrued by the taxpayer during such taxable year from such transactions.

(E) Unrecognized gain. The term "unrecognized gain" has the meaning given to such term by section 1092(a)(3).