(1) Section 1.475(a)–2 (concerning marking a security to market upon disposition) applies to dispositions occurring on or after January 4, 1995.

(2) Section 1.475(b)–4 (concerning the identification requirements for obtaining an exemption from mark-to-market treatment) applies to identifications made on or after January 4, 1995.

Margaret Milner Richardson,

Commissioner of Internal Revenue. [FR Doc. 95–13 Filed 01–03–95; 8:45 am] BILLING CODE 4830–01–U

26 CFR Part 1

[IA-55-94]

RIN 1545-AT13

Accuracy-related Penalty

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations which provide guidance as to when a taxpayer may rely upon the advice of others as evidence of reasonable cause and good faith within the meaning of section 6664(c) of the Internal Revenue Code of 1986 for purposes of avoiding the accuracyrelated penalty of section 6662, and what constitutes reasonable cause and good faith within the meaning of section 6664(c) as it applies to the substantial understatement penalty of section 6662(b)(2) with respect to tax shelter items of a corporation. The proposed regulations implement changes to the accuracy-related penalty under section 6662 that were made by Title VII of the Uruguay Round Agreements Act (the Act) implementing the Uruguay Round of the General Agreement on Tariffs and Trade. Finally, this document provides notice of a public hearing on the proposed amendments to the regulations.

DATES: Written comments must be received by April 7, 1995. The IRS intends to hold a public hearing on these proposed regulations on April 28, 1995, beginning at 10 a.m. Persons wishing to speak at the hearing must submit outlines of their comments by April 7, 1995.

ADDRESSES: Send submissions to: Internal Revenue Service, Attn: CC:DOM:CORP:T:R (IA–55–94), room 5228, POB 7604, Ben Franklin Station, Washington, DC 20044. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, David L. Meyer, 202–622–6232; concerning submissions, Christina Vasquez, 202– 622–6803. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 6662 of the Internal Revenue Code (Code) imposes an accuracyrelated penalty on certain underpayments of tax. Section 6664(c) provides that no accuracy-related penalty is imposed with respect to any portion of an underpayment if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

Under current regulations interpreting sections 6662 and 6664, a taxpayer's good faith reliance on the advice (including an opinion) of a professional tax advisor may be taken into account for purposes of determining whether the taxpayer will be subject to an accuracy-related penalty. See, e.g., §§ 1.6662–4(g)(4)(ii) and 1.6664–4(b).

Section 6662(b)(2) of the Code imposes a penalty for a substantial understatement of income tax. An understatement is substantial if it exceeds the greater of 10 percent of the tax required to be shown on the taxpayer's return for the taxable year, or \$5,000 (\$10,000 in the case of a corporation other than an S corporation or a personal holding company). An understatement is defined as the excess of (1) the amount of tax required to be shown on the taxpayer's return, over (2) the amount of tax imposed which is shown on the return, reduced by any rebate.

The Code provides that the amount of an understatement is reduced to the extent that certain conditions are met. For example, section 6662(d)(2), prior to amendment by the Act (Pub. L. 103-465), provided that an understatement is reduced by the portion of the understatement attributable to a tax shelter item of the taxpayer (the section 6662 tax shelter rule) if: (1) there is substantial authority for the taxpayer's treatment of the tax shelter item; and (2) the taxpayer reasonably believed (at the time its return was filed) that its treatment of such item was more likely than not the proper treatment.

The substantial understatement penalty was first adopted in section 323 of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97– 248. At that time, Congress believed that

the new standards would "assure that taxpayers who take highly aggressive filing positions are penalized while those who endeavor in good faith to self-assess are not penalized" and that, with respect to tax shelters, "if the principal purpose of a transaction is the reduction of tax, it is not unreasonable to hold participants to a higher standard than ordinary taxpayers." H.R. Conf. Rep. No. 97th Cong., 2d Sess. 575-76 (1982), 1982–2 C.B.650. More recently, Congress has been concerned that the substantial understatement penalty has not been effectively deterring corporate tax shelter transactions and thus, in Section 744 of the Act, eliminated the section 6662 tax shelter rule as it applies to corporations. As a result of this change, "the standards applicable to corporate tax shetlers are tightened' and "in no instance [will] this modification result in a penalty not being imposed where a penalty would have been imposed under prior law." S. Rep. No. 412, 103d Cong., 2d Sess. 165 (1994); H.R. Rep. No. 826, 103d Cong., 2d Sess. 198-99 (1994). The change is effective for transactions occurring after December 8, 1994.

The proposed regulations set forth in this document address issues related to the section 6662 tax shelter rule and the reasonable cause exception of section 6664. This guidance includes, but is not limited to, rules that reflect the amendment of section 6662 by the Act.

Explanation of Provisions

Reliance on Tax Advisor

The proposed regulations set forth general rules clarifying when a taxpayer may be considered to have reasonably relied in good faith upon advice (including an opinion provided by a professional tax advisor). These rules apply to all taxpayers and to both tax shelter items and non-tax shelter items. In particular, the rules apply in determining whether reasonable cause and good faith exist for purposes of section 6664(c) and also apply in determining whether a taxpayer other than a corporation is considered to have reasonably relied in good faith on an opinion in order to satisfy the "reasonable belief" requirement of the section 6662 tax shelter rule.

In general, the proposed regulations require advice to be based on all material facts (including, for example, the taxpayer's purposes for entering into a transaction) and to relate applicable law to such facts in reaching its conclusion. The advice must not be based upon unreasonable factual or legal assumptions (including assumptions as to future events), nor