

**SUPPORTING STATEMENT  
(INTL-656-87 (Final))**

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Sections 1291-1297 of the Internal Revenue Code of 1986 provide special rules for the taxation of shareholders of passive foreign investment companies (PFICs). Section 1295 of the Code permits a shareholder to elect to treat a PFIC as a qualified electing fund (QEF) in order to include a pro rata share of the QEF's annual earnings under section 1293. If the shareholder makes the QEF election after the first year as a PFIC in the shareholder's holding period of the foreign corporation, the shareholder is subject to both sections 1291 and 1293. The final regulations provide rules for elections that may be made by shareholders of such QEFs.

Section 1291(d)(2)(A) permits a U.S. person who is a shareholder of certain QEFs to mark his or her investment in the QEF to market as of the first day of the taxable year in which the shareholder makes the QEF election, be taxed on the gain pursuant to section 1291, acquire a new basis and holding period in the investment, and thereafter be taxed under the special rules applicable to shareholders of QEFs. Section 1291(d)(2)(A)(iii) requires the electing shareholder to establish the fair market value of the stock as of the day of the deemed sale to the satisfaction of the secretary. The election is made on Form 8621. Under section 1.1291-10(d) of the final regulations, the electing shareholder must file a statement with the Internal Revenue Service that contains information relevant to the election, such as the fair market value of the stock, the identity of the QEF, the day of the deemed sale, the number of shares held, their tax basis and holding period on that day, and the calculation of the tax consequences of the election under section 1291.

Section 1291(d)(2)(B) of the Internal Revenue Code of 1986 permits a U.S. person that is a shareholder of a qualified electing fund (QEF) that is a controlled foreign corporation (CFC) within the meaning of section 957(a) to elect to include in income as a dividend the electing shareholder's pro rata share of the post-1986 earnings of the CFC attributable to the stock held on the first day that the CFC is a QEF with respect to the electing shareholder. By making the election, the shareholder that did not make the QEF

election for the first year that the corporation was a PFIC purges its holding period of the non-QEF years. By purging those tainted years from its holding period, the QEF shareholder will not be subject to section 1291. The election is made on Form 8621. Section 1.1291-9(d)(2) modifies the requirements of the regulations by requiring the electing shareholder to attach a schedule to Form 8621 to demonstrate the calculation of its pro rata share of the post-1986 earnings and profits, and to provide information to support an exclusion from that amount for an amount that the shareholder or another U.S. person previously included in income. The information required includes identification of the U.S. person that previously included the amount of the exclusion in income, the amount previously included, the provision of the law under which the amount was included, the taxable year of the inclusion, a description of the transaction in which the electing shareholder acquired the amount in income, and the provision of the law pursuant to which the electing shareholder's holding period of the stock of the CFC includes the period that the stock was held by the U.S. person that included the amount in income.

**2. USE OF DATA**

The recordkeeping and reporting requirements enable the Internal Revenue Service to identify those U.S. taxpayers who are QEF shareholders; to verify that U.S. taxpayers are including their shares of the QEF's current earnings, as required in section 1293 of the Internal Revenue Code; to be informed of those QEF shareholders who are not paying their section 1293 tax liability because they made the section 1294 election to defer the time for payment; to identify those shareholders who no longer are subject to section 1291 by reason of their mark-to-market elections; and to verify that the electing shareholders recognized their gain and paid tax on that gain pursuant to section 1291.

**3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

We have no plans to offer electronic filing. IRS publication, regulations, notices and letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

**4. EFFORTS TO IDENTIFY DUPLICATION**

We have attempted to eliminate duplication within the agency wherever possible.

**5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

We have been unable to reduce the burden of small businesses.

**6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

Not applicable.

**7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)**

Not applicable.

**8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS**

A notice of proposed rule-making was published in the Federal Register on April 1, 1992 (57 FR 11024, 1545-1304), simultaneously with temporary regulations (57 FR 10002). A public hearing was held on November 23, 1992.

A notice of proposed rulemaking was published in the Federal Register on March 2, 1988 (53 FR 6781, 1545-1028), simultaneously with temporary regulations (53 FR 6770). A public hearing was not held.

The final regulation (TD 8701) was published in the Federal Register on December 27, 1996 (61 FR 68149).

We received no comments during the comment period in response to the Federal Register Notice (74 FR 60026), dated November 19, 2009.

**9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

**10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

**11. JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

**12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

Section 1.1291-10(d) of the final regulations provides the manner for making the election to recognize gain with respect to the stock held on the first day of the first taxable year of the PFIC as a QEF. We estimate that 125 of the 500 U.S taxpayers who are shareholders of each of the 1,000 QEFs will make the section 1291(d)(2)(A) election, and that it will take each person .75 hour to prepare the election. The total burden is 93,750 hours.

Number of QEFs:

		1,000
Number of electing shareholders per QEF:	<u>x125</u>	
Total number of electing shareholders:	125,000	
Number of electing shareholders:		
	125,000	
Time per shareholder:		
	<u>X.75</u>	—
Total Burden:		
		93,750

Section 1.1291-9(d) of the final regulations provides the manner for making the election to be treated as receiving a dividend with respect to the stock held on the first day of the first taxable year of the PFIC as a QEF. We estimate that 25 of the 250 U.S. taxpayers who are shareholders of each of the 250 QEFs that are CFCs will make the section 1291(d)(2)(B) election, and that it will take each person one hour to prepare the attachment to Form 8621 required in section 1.1291-9(d)(2). The total burden for this

requirement is 6,250 hours.

Number of PFICs that are CFCs:

Number of electing shareholders per PFIC:	<u>X 25</u>	250
Total number of electing shareholders:		6,250

Number of electing shareholders:

6,250

Time per shareholder:

X 1

Total Additional Burden:

6,250

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

**13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

As suggested by OMB, our Federal Register Notice dated November 19, 2009, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any comments during the comment period on this subject. As a result, estimates of the cost burdens are not available at this time.

**14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

Not applicable.

**15. REASONS FOR CHANGE IN BURDEN**

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

**16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION**

Not applicable.

**17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS**

**INAPPROPRIATE**

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I**

Not applicable.

**Note:** The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.