

**SUPPORTING STATEMENT
(INTL-941-86; INTL-656-87; INTL-704-87)**

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Sections 1291-1297 provide special rules for the taxation of shareholders of passive foreign investment companies (PFICs).

Section 1.1291-1(i) of the proposed regulations requires each direct and indirect shareholder of a PFIC to annually file a separate Form 8621 for each PFIC of which the person is a shareholder during the taxable year with its federal income tax return for that year. The form is used to make certain elections, report income inclusions under section 1293, report and determine the tax consequences of distributions and dispositions, and report the status of section 1294 elections. This reporting requirement provides the means by which the Internal Revenue Service can ascertain the U.S. persons that are shareholders of PFICs, the identity of the PFICs, and the occurrence of transactions taxable under the PFIC provisions.

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 1291(f) of the Code provides that, to the extent provided in regulations, gain will be recognized on any transfer of stock of a PFIC that is a section 1291 fund within the meaning of § 1.1291-1(b)(2)(v) of the proposed regulations, notwithstanding any other provision of the Code. Section 1.1291-6(b)(1) of the proposed regulations provides that, in general, gain will be recognized on a

transfer of PFIC stock. A shareholder that disposes of stock of a section 1291 fund completes Form 8621 to report the gain and determine the tax consequences under section 1291.

Section 1.1291-6(c) of the proposed regulations provides exceptions to the general rule requiring gain recognition. If an exception applies to a transfer of section 1291 fund stock, § 1.1291-6(g) of the proposed regulations provides that the shareholder must attach a statement to Form 8621 containing the following information: A description of the transfer of the section 1291 fund, the consideration received for the transferred stock, identification of the transferee of the transferred stock, the applicable exception, and a discussion of how the shareholder qualifies for the exception. The requirement to attach the §1.1291-6(g) statement to Form 8621 is in addition to the other requirements stated in the instructions to Form 8621.

Sections 1.1291-2(f)(2)(ii) and 1.1291-3(e)(5)(iii) of the proposed regulations require domestic partnerships and S corporations to separately state on their federal income tax returns and schedules for partners and shareholders distributions from non-qualified funds and gains from the dispositions of the stock of non-qualified funds. The proposed regulations also require domestic partnerships and S corporations to provide the partners and shareholders the information needed by such persons to calculate and report their liability under section 1291.

Section 1.1291-8 of the proposed regulations provides guidance to a regulated investment company (RIC) wishing to mark to market at the end of each tax year the stock of non-qualified funds of which the RIC is shareholder, and include in income the excess of the fair market value of such stock over its adjusted basis. Only RICs that determine and publish their net asset value daily or weekly may make the election. Section 1.1291-8(g) provides the manner in which the RIC is to make the election. A RIC makes the election by attaching a statement to Form 8621 indicating that the election is being made and identifying the non-qualified funds whose stock will be subject to the election, the type of RIC making the election, the fair market value of each non-qualified fund (the value used by the RIC for purposes of determining its net asset value), and the valuation date. Additional information is required if the RIC is making a retroactive election or applying an election retroactively.

Section 1.1291-8(g)(3) requires that the RIC annually provide the information required in the election statement.

2. USE OF DATA

The reporting requirements enable the Internal Revenue Service to verify the amounts reported as deemed dividends and identify those shareholders that no longer are subject to section 1291 by reason of their deemed dividend elections, track transfers of non-qualified fund stock, and determine whether the ability to tax the deferred gain on a subsequent transfer of the stock has been preserved.

Section 1.1291-8(g) requires RICs, as part of their annual filing of Form 8621, to identify the PFICs whose stock is marked-to-market, state the valuation, and report the mark-to-market gain. This information will enable the Internal Revenue Service to verify the amounts reported as mark-to-market gain.

The information to be reported by partnerships and S corporations pursuant to §§1.1291-2(f)(2)(ii) and 1.1291-3(e)(5)(iii) will help the Internal Revenue Service track indirect distributions and dispositions, and will facilitate compliance by partners and S corporation shareholders, the indirect shareholders of the PFIC stock.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

We have no plans to offer electronic filing. IRS Publications, 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). A public hearing was held on November 23, 1992.

We received no comments during the comment period in response to the **Federal Register** notice dated July 13, 2010 (75 FR 40027).

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 1.1291-1(i) of the proposed regulations provides that Form 8621 must be filed for each PFIC of which the taxpayer was a shareholder during the tax year. The burden for this requirement is reflected in the burden of Form 8621.

Section 1.1291-6(g) of the proposed regulations requires a taxpayer that transfers stock of a non-qualified fund in a transaction that qualifies for an exception to the gain recognition rule of §1.1291-6(c) to attach a statement to Form 8621, filed for the year of the transfer, that

identifies the exception and the transferee of the transferred stock, and provides other information. We estimate that during a tax year 1,000 taxpayers will transfer stock of non-qualified funds in transactions that qualify for an exception to the gain recognition rule, and that it will take each taxpayer one hour to prepare the attachment to Form 8621 described in §1.1291-6(g). The total burden for this requirement is 1,000 hours.

Sections 1.1291-2(f)(2)(ii) and 1.1291-3(e)(5)(iii) of the proposed regulations require domestic partnerships and S corporations that are direct or indirect shareholders of non-qualified funds to separately state on their returns and schedules distributions from non-qualified funds, and gains from the dispositions of their stock, and provide the partners and S corporation shareholders the information necessary to calculate and report their liability under section 1291. We estimate that 1,000 partnerships and S corporations that are shareholders of non-qualified funds will receive distributions from the non-qualified funds or dispose of their stock at a gain, and that it will take each partnership or S corporation one hour to separately state the information on their returns and schedules and prepare the additional information to be provided to the partners and S corporation shareholders. The total burden for this requirement is 1,000 hours.

Section 1.1291-8(g) of the proposed regulations provides the manner in which a regulated investment company (RIC) makes the election to mark to market at the end of each taxable year the stock of non-qualified funds. We estimate that 500 regulated investment companies will make the mark-to-market election, and that it will take each RIC one hour to prepare the attachment to Form 8621 required in §1.1291-8(g) in the year in which the election is made and in each subsequent year. The total burden for this requirement is 500 hours.

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 July 13, 2010 (75 FR 40027)** 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 are no changes being made to this regulation at this time. 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.

