

SUPPORTING STATEMENT

Internal Revenue Service (IRS)
Treatment of Shareholders of Certain Passive Investment Companies
OMB Number **1545-1507**

1728. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Sections 1291 thru 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.

This collection covers final regulations added to the Income Tax Regulations (26 CFR part 1) under section 1291(d)(2) of the Internal Revenue Code. The final regulations provide rules for making a deemed sale or deemed dividend election to purge a shareholder's holding period of stock of a PFIC of those taxable years during which the PFIC was not a QEF. The Tax Reform Act of 1986 added section 1291(d)(2)(A), relating to the deemed sale election, effective for taxable years of foreign corporations beginning after December 31, 1986. The Technical and Miscellaneous Revenue Act of 1988 amended section 1291(d)(2) to add new section 1291(d)(2)(B), relating to the deemed dividend election, effective for taxable years of foreign corporations beginning after December 31, 1986.

1729. USE OF DATA

This information is required to enable the IRS to verify that a taxpayer is reporting the correct amount of income, gain or loss from that taxpayer's interest in the foreign corporation.

The recordkeeping and reporting requirements outlined in regulation sections 1.1291 and 1.1298 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 Code section 1291.

1730. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

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. Compliance with these regulations require a statement to be included with Form 8621.

The IRS uses Form 8621 to determine if the shareholder has correctly computed his or her income tax, has correctly elected computed any additional tax and interest. IRS has no plans at this time to offer electronic filing, of Form 8621, because of the low volume compared to the cost of electronic enabling.

1731. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available or use or adaption from another source.

1732. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

It has been determined that this Treasury Decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. These regulations, which have a retroactive effective date, satisfy the Administrative Procedure Act's requirement in section 553(d) for good cause because they provide necessary guidance for the period after March 31, 1995, and because they are not detrimental to taxpayers. These regulations are necessary because they provide taxpayers with the rules needed to make the elections under section 1291(d)(2). Pursuant to section 7805(f) of the Internal Revenue Code, the notices of proposed rulemaking preceding these regulations were submitted to the Small Business Administration for comment on their impact on small business.

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

The information required is needed to verify compliance with the Internal Revenue Code of the Treasury Regulations. A less frequent collection of taxes and tax information could adversely affect the government's effectiveness and would reduce the oversight of the public in ensuring compliance with Internal Revenue Code and hinder the IRS from meeting its mission.

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

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

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

On March 2, 1988, the IRS and Treasury Department published temporary regulations (TD 8178, 1988–1 CB 313 [53 FR 6770]), and proposed regulations that cross-referenced the temporary regulations (INTL 941–86 [53 FR 6781]), concerning the election under section 1298(b)(1) (then section 1297(b)(1)) (1988 temporary regulations). The 1988 temporary regulations permitted a shareholder of a former PFIC, as defined in § 1.1291–9(j)(2)(iv), to purge the PFIC taint by making a deemed sale election. On January 2, 1998, the IRS and Treasury Department published temporary regulations (TD 8750; 1998–8 IRB 4 [63 FR 6]) and proposed regulations that cross-referenced the temporary regulations (REG-115795–97 [63 FR 39–01]) that amended the 1988 temporary regulations. The 1998 temporary regulations provided that a shareholder of a former PFIC that was a controlled foreign corporation (as defined in section 957(a)) during its last taxable year as a PFIC under section 1297(a), may apply the rules of the deemed dividend election under section 1291(d)(2)(B) and § 1.1291–9 to its section 1298(b)(1) election. The 1998 temporary regulations expired on January 2, 2001, pursuant to section 7805(e)(2).

One written comment was received regarding the deemed sale election in response to the notice of proposed rulemaking published by cross-reference to the 1988 regulations. No public hearing was requested or held on the notice of proposed rulemaking. After consideration of the comment, the 1988 temporary regulations, as modified by the 1998 temporary regulations that permit a deemed dividend election in certain circumstances, are adopted as final regulations with the changes discussed in TD 9231 (70 FR 72914).

On December 8, 2005, the IRS and the Treasury Department published final regulations under section 1298(b)(1) and removal of temporary regulations (TD 9231) in the Federal Register (70 FR 72914). The final regulations provided rules for a shareholder of a former PFIC (as defined in § 1.1291–9(j)(2)(iv)) to make a deemed dividend or deemed sale election to purge the PFIC taint of the stock of the foreign corporation (that is, to end treatment of the stock of the foreign corporation as PFIC stock with respect to the shareholder).

On December 8, 2005, the Internal Revenue Service and the Treasury Department also published temporary regulations (TD 9232) under sections 1291(d)(2), 1297(e) and 1298(b)(1) in the Federal Register (70 FR 72908). A

notice of proposed rulemaking (REG–133446–03) cross-referencing the temporary regulations was published in the Federal Register for the same day (70 FR 72952). The temporary and proposed regulations provided guidance to shareholders of section 1297(e) PFICs (as defined in § 1.1291–9(j)(2)(v)) on making a deemed sale or deemed dividend election to purge the PFIC taint of the stock of the foreign corporation. The temporary and proposed regulations also provided guidance to shareholders of section 1297(e) PFICs and shareholders of former PFICs on making late purging elections (provided certain requirements are met).

No public hearing was requested or held. A comment responding to the notice of proposed rulemaking was received. After consideration of the comment, the proposed regulations were adopted as amended in TD 9360 (1545-1965) and the corresponding temporary regulations were removed.

In response to the Federal Register notice dated October 15, 2019 (84 FR 55229), we received no comments during the comment period regarding these regulations.

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

No payment or gift has been provided to any respondents.

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

For statements filed with Form 8621, *Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund*, a privacy impact assessment (PIA) has been conducted for information collected under this request as part of the “Information Returns Processing (IRP)” and a Privacy Act System of Records notice (SORN) has been issued for these systems under Treasury/IRS 22.061 – Information Return Master File; Treasury/IRS 24.030 – CADE-Individual Master File; Treasury/IRS 34.037- IRS Audit Trail and Security Records System. The Department of Treasury PIAs can be found at <http://www.treasury.gov/privacy/PIAs/Pages/default.aspx>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1.1291-9 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.

There are an estimated 250 QEF's that are CFC's. It is estimated that 25 U.S. taxpayers who are shareholders of each of the 250 CFC QEF's will make the section 1291(d)(2)(B) election ($250 \times 25=6,250$ estimated annual responses). It is estimated that it will take each person one hour to prepare the attachment [which is included with Form 8621 (1545-1002)], required in section 1.1291-9(d) (2). The total burden for this requirement is 6,250 hours.

Section 1.1291-10 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.

There are an estimated 1,000 QEF's. It is estimated that 125 U.S taxpayers who are shareholders of each of the 1,000 QEF's will make the section 1291(d)(2)(A) election ($1,000 \times 125=125,000$ estimated annual responses). It is estimated that it will take each person 45 minutes to prepare the election. The total burden is 93,750 hours.

Section 1.1298-3 provides the manner for making the election to recognize gain that is available to shareholders of former PFICs.

It is estimated that there will be 275,000 former PFICs and shareholders of each former PFIC that will make the deemed sale election under section 1298(b)(1). It is estimated that it will take each electing shareholder 24minutes to prepare and file the election statement and amended return. The total burden is 112,500 hours.

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
1.1291-9	Deemed dividend election	250	25	6,250	1	6,250
1.1291-10	Deemed sale election	1,000	125	125,000	.75	93,750
1.1298-3	Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a	275,000	1	275,000	.41	112,500

	former PFIC				
Totals		276,250		406,250	212,500

The following regulation imposes no additional burden. Please continue to assign OMB number 1545-1507 to this regulation.

1.1291-9

1.1291-10

1.1298-3

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated October 15, 2019, 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 responses from taxpayers on this subject. As a result, estimates of these cost burdens are not available currently. To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

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. We restructured the information collection to clearly outline the burden and reallocate the burden under the appropriate regulations. There was no increase or decrease in overall burden.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis, and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

The IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the form

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**

There are no exceptions to the certification statement.

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.