

SUPPORTING STATEMENT
Internal Revenue Service
Guidance on Passive Foreign Investment Companies and Controlled Foreign Corporations Held by
Domestic Partnerships and S Corporations and Related Person Insurance Income
OMB Control Number 1545-[]

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The IRS is proposing regulations regarding the treatment of domestic partnerships and S corporations that own stock of passive foreign investment companies (“PFICs”) and their domestic partners and shareholders (the “proposed regulations”). The proposed regulations also provide guidance regarding the determination of the controlling domestic shareholders of foreign corporations, the owner of a controlled foreign corporation (“CFC”) or qualified electing fund (“QEF”) that makes an election under section 1411, the treatment of S corporations with accumulated earnings and profits under subpart F of part III of subchapter N of chapter 1 of the Internal Revenue Code (“subpart F” of the “Code”), and the determination and inclusion of related person insurance income (“RPII”) under section 953(c). The proposed regulations affect United States persons that own, directly or indirectly, stock in certain foreign corporations.

This rule, if enacted, would include the following collections of information:

Domestic Partnerships and S Corporations and Related Person Insurance Income

Under proposed §1.1295-1(d)(2)(i)(A) and (d)(2)(ii)(A), where stock in a foreign corporation that constitutes a passive foreign investment company (“PFIC”) is held by a partnership or S corporation, respectively, a U.S. person that is a PFIC shareholder (as defined in proposed §1.1291-1(b)(7)) that owns the PFIC stock through the partnership or S corporation may elect to treat the PFIC as a qualified electing fund (“QEF”). An election to treat a PFIC as a QEF (“QEF election”) is made by the shareholder filing Form 8621; the reporting burden associated with QEF elections is reflected in OMB control number 1545-1002 (“Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund”). Proposed §1.1295-1(d)(2)(i)(A) and (d)(2)(ii)(A) impose additional collections of information whereby a partner or S corporation shareholder, respectively, making a QEF election with respect to a PFIC held by the partnership or S corporation must notify the partnership or S corporation that it has made the election no later than 30 days after filing the return in which the election is made; this notification may be provided in any reasonable manner.

Under proposed §1.1296-1(h)(1)(i)(A), where stock in a publicly-traded PFIC is held by a partnership or S corporation, a U.S. person that is a PFIC shareholder (as defined in proposed §1.1291-1(b)(7)) that owns the PFIC stock through the partnership or S corporation may make a mark-to-market (“MTM”) election with respect to the PFIC. MTM elections are made by the shareholder filing Form 8621; the reporting burden associated with MTM elections is reflected in OMB control number 1545-1002 (“Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund”). Proposed §1.1296-1(h)(1)(i)(A) imposes additional collections of information whereby a partner or S corporation shareholder making an MTM election with respect to a PFIC held by the partnership or S corporation must notify the partnership or S corporation that it has made the election no later than 30 days after filing the return in which the election is made; this notification may be provided in any reasonable manner.

S Corporation AE&P Amount Recordkeeping Requirement

Sections 951 and 951A of the IRC require certain U.S. persons (U.S. shareholders) that own at least 10% of the stock in a controlled foreign corporation ("CFC") to include in income currently their pro rata share of a CFC's subpart F income, amounts invested in U.S. property, and global intangible low-taxed income. Such inclusions are limited to US shareholders that own the CFC stock within the meaning of section 958(a) (directly or through certain foreign entities). Under §1.958-1(d) (by virtue of section 1373(a)), S corporations are not considered to own CFC stock under section 958(a), and thus are not subject to inclusions under section 951 or section 951A. Proposed §1.958-1(e) permits an S corporation to elect to be treated as owning stock in a CFC under section 958(a) if it meets certain conditions, including having accumulated earnings and profits ("AE&P") as of a certain date. If the election is made, the S corporation is subject to inclusions under sections 951 and 951A at the entity level. Proposed §1.958-1(e)(1)(v) requires that S corporations that make this election must maintain sufficient records substantiating their AE&P amount for the election to be valid.

2. USE OF DATA

The data is used to notify the partnership or S corporation of the partner's or S corporation shareholder's QEF or MTM election, so the partnership or S corporation is aware for information reporting and other purposes (including any necessary tax adjustments), and/or to verify the amount of an S corporation's AE&P amount to ensure that the requirements of proposed §1.958-1(e) are met.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

Taxpayers may use any technology available to them to meet the requirements in proposed §§1.1295-1(d)(2)(i)(A), 1.1295-1(d)(2)(ii)(A), 1.1296-1(h)(1)(i)(A), and §1.958-(e)(1)(v).

4. EFFORTS TO IDENTIFY DUPLICATION

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

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

For Domestic Partnerships and S Corporations and Related Person Insurance Income, it is not possible to further reduce reporting requirements for small businesses as the burden for the notice requirements in proposed §§1.1295-1(d)(2)(i)(A), 1.1295-1(d)(2)(ii)(A), and 1.1296-1(h)(1)(i)(A) are limited in scope.

For S Corporation AE&P Amount Recordkeeping Requirement, it is not possible to reduce reporting requirements for small businesses because an S corporation making an election under proposed §1.958-1(e) is required to determine its AE&P amount for the election to be valid, and the requirement of proposed §1.958-1(e)(1)(v) covered by this submission is simply a requirement to maintain records of such amount.

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

Consequences of less frequent collection on federal programs or policy activities could consist of

inaccurate and untimely filing of tax returns.

3. 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

Periodic meetings are held between IRS personnel and representatives of professional groups to discuss tax law and tax forms. During these meetings, there will be an opportunity for those attending to make comments regarding the S corporation AE&P recordkeeping requirement and the partner's or S corporation shareholder's QEF and/or MTM election notice requirements. Additionally, there has been an opportunity for public comment in response to Notice 2020-69, 2020-39 I.R.B. 604 (upon which proposed §1.958-1(e) is based), and the recordkeeping requirement covered by this submission is included in REG-118250-20, which will also undergo public notice and comment procedures. In addition, the notice requirements are included in REG-118250-20, which will undergo public notice and comment procedures.

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

No payment or gift has been provided to any respondents.

2. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

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

3. JUSTIFICATION OF SENSITIVE QUESTIONS

These collections of information do not require inclusion of any identifying numbers as provided by 26 USC 6109.

4. ESTIMATED BURDEN OF INFORMATION COLLECTION

Domestic Partnerships and S Corporations and Related Person Insurance Income

Estimated total annual reporting burden: 686,500 hours
Estimated average annual burden per respondent: 0.5 hours
Estimated number of respondents: 1,373,000
Estimated frequency of responses: one-time election

S Corporation AE&P Amount Recordkeeping Requirement

Estimated total annual reporting burden: 213 hours
Estimated average annual burden per respondent: 0.5 hours
Estimated number of respondents: 425

Estimated frequency of responses: annually

Total for collection

IRC	Description	# Respondents	# Responses Per Respondent	# Annual Responses	Hours Per Response	Total Burden
Proposed §1.1295-1(d)(1)(i)(A)	QEF election with respect to a PFIC held by the partnership or S corporation election notification	1,300,000	1	1,300,000	.5	650,000
Proposed §1.1295-1(d)(2)(ii)(A):	QEF election with respect to a PFIC held by the partnership or S corporation election notification	2,000	1	2,000	.5	1,000
Proposed §1.1296-1(h)(1)(i)(A)	MTM election with respect to a PFIC held by the partnership or S corporation election notification	71,000	1	71,000	.5	35,500
Proposed §1.958-1(e)(1)(v)	recordkeeping requirement	425	1	425	.5	213 (212.5 rounded)
TOTAL		1,373,435	1	1,373,435	.5	686,713

5. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

Under proposed §1.1295-1(d)(2)(i)(A), (d)(2)(ii)(A), and §1.1295-1(d)(1)(i)(A), the estimated cost to respondents for the hour burdens shown is approximately \$65,217,500, based on an expected wage rate of \$95 per hour as estimated by the IRS's Research, Applied Analytics and Statistics division as the appropriate wage rate for this set of taxpayers. The estimated cost is not annualized because the collections of information are only required to be satisfied one time, upon an initial election by the taxpayer.

Under proposed §1.958-1(e)(1)(v), the estimated annualized cost to respondents for the hour burdens shown is approximately \$20,188, based on an expected wage rate of \$95 per hour.

6. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no annualized cost to the federal government.

7. REASONS FOR CHANGE IN BURDEN

There is an increase in burden as this is a new NPRM and information collection.

Proposed §§1.1295-1(d)(2)(i)(A), 1.1295-1(d)(2)(ii)(A), and 1.1296-1(h)(1)(i)(A) each impose a new burden in the form of a notice requirement and do not change any existing burden.

Proposed §1.958-1(e)(1)(v) imposes a new burden in the form of a recordkeeping requirement and does not a change any existing burden.

8. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

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

9. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

As there is no form associated with these notice requirements, this question is not applicable.

10. 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.