Instructions for Form 8621

(Revised December 2000)

Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund

Section references are to the Internal Revenue Code unless otherwise noted.

Department of the Treasury
Internal Revenue Service

Changes To Note

Final regulations under sections 1295 and 1296 have been issued that provide guidance to passive foreign investment company (PFIC) shareholders.

- A shareholder is no longer required to file a duplicate copy of Form 8621 with the Internal Revenue Service Center, Philaldelphia, PA, when the shareholder makes the section 1295 election to be treated as a QEF or reports its annual pro rata share of the ordinary earnings and net capital gain of the QEF. See **When and Where To File** below and the instructions for how to make Election A on page 3. For effective dates, see Regulations section 1.1295-1(k).
- A shareholder is not required to include in income its pro rata share of ordinary earnings and net capital gain from a QEF for a tax year in which the foreign corporation is not treated as a PFIC. However, the section 1295 election is not terminated. If the foreign corporation is treated as a PFIC in any subsequent tax year, the shareholder's original section 1295 election is still in effect and the annual income inclusion and reporting requirements will apply. For more information, see Regulations section 1.1295-1(c)(2). For effective dates, see Regulations section 1.1295-1(k).
- The definition of "marketable stock" for purposes of making the mark-to-market election under section 1296 has been clarified. See Regulations section 1.1296-1(e) and **Mark-to-Market Election for PFIC Stock** on page 2.

General Instructions

Who Must File

Generally, a U.S. person must file Form 8621 for each tax year in which that U.S. person is a direct or indirect shareholder of a PFIC. A **separate** Form 8621 must be filed for each PFIC in which stock is held. See **Chain of ownership** below for specific filing requirements.

Indirect shareholder. Generally, a U.S. person is an indirect shareholder of a PFIC if it is:

1. A direct or indirect owner of a pass-through entity that is a direct or indirect shareholder of a PFIC;

2. A shareholder of a PFIC that is a shareholder of another PFIC; or

3. A 50%-or-more shareholder of a foreign corporation that is not a PFIC and that directly or indirectly owns stock of a PFIC.

Interest holder of pass-through entities. The following interest holders must file Form 8621:

1. A U.S. person that is an interest holder of a foreign pass-through entity that is a direct or indirect shareholder of a PFIC;

2. A U.S. person that is considered (under sections 671 through 679) the shareholder of PFIC stock held in trust; and

3. A U.S. partnership, S corporation, trust (other than a trust that is subject to sections 671 through 679 for the PFIC stock), or estate that is a direct or indirect shareholder of a PFIC.

Note: *U.S. persons that are interest holders of pass-through entities described in **3** above must file Form 8621 if the pass-through entity fails to file such form or the U.S. person is required to recognize any income under either section 1291 or section 1293.*

Chain of ownership. If the shareholder owns one PFIC and through that PFIC owns one or more other PFICs, the shareholder must either:

1. File a Form 8621 for each PFIC in the chain or

2. Complete Form 8621 for the first PFIC and, in an attachment, provide the information required on Form 8621 for each of the other PFICs in the chain.

When and Where To File

Attach Form 8621 to the shareholder's tax return and file both by the due date, including extensions, of the return.

If you are not required to file an income tax return or other return for the tax year, file Form 8621 directly with the Internal Revenue Service Center, P.O. Box 21086, Philadelphia, PA 19114.

Definitions and Special Rules

Passive Foreign Investment Company (PFIC)

A foreign corporation is a PFIC if it meets either the income or asset test described below.

1. Income test. 75% or more of the corporation's gross income for its taxable year is passive income (as defined in section 1297(b)).

2. Asset test. At least 50% of the average percentage of assets (determined under section 1297(f)) held by the foreign corporation during the taxable year are assets which produce passive income or are held for the production of passive income.

Basis for measuring assets. When determining PFIC status using the asset test, a foreign corporation may use adjusted basis if:

1. The corporation is nonpublicly traded **and**

2. The corporation is **(a)** a CFC or **(b)** makes an election to use adjusted basis.

Publicly traded corporations must use fair market value when determining PFIC status using the asset test.

Look-thru rule. When determining if a foreign corporation that owns at least 25% (by value) of another corporation is a PFIC, the foreign corporation is treated as if it held a proportionate share of the assets and received directly its proportionate share of the income of the 25%-or-more owned corporation.

CFC overlap rule. A 10% U.S. shareholder (defined in section 951(b)) that includes in income its pro rata share of subpart F income for stock of a CFC that is also a PFIC, generally will not be subject to the PFIC provisions for the same stock. This exception does not apply to option holders. For more information, see section 1297(e).

Note: *The attribution rules of section 1298(a)(2)(B) will continue to apply even if the foreign corporation is not a PFIC under the CFC overlap rule.*

Qualified Electing Fund (QEF)

A PFIC is a QEF if the U.S. person who is a direct or indirect shareholder of the PFIC elects (under section 1295) to treat the PFIC as a QEF. See the instructions for Election A on page 2 for information on making this election.

Tax Consequences for Shareholders of a QEF

- A shareholder of a QEF must annually include in gross income its pro rata share of the ordinary earnings and net capital gain of the QEF.
- The shareholder may elect to extend the time for payment of tax on its share of the undistributed earnings of the QEF (Election D) until the QEF election is terminated.
- The shareholder may make a deemed sale election (Election B) or a deemed dividend election (Election C) to purge the section 1291 fund years from its holding period.

Note: *A shareholder that receives a distribution from an unpedigreed QEF (defined in Regulations section 1.1291-9(j)(iii)) may also be subject to the rules applicable to a shareholder of a section 1291 fund (see below).*

Basis adjustments. A shareholder's basis in the stock of a QEF is increased by the earnings included in gross income and decreased by a distribution from the QEF to the extent of previously taxed amounts.

Section 1291 Fund

A PFIC is a section 1291 fund if:

1. The shareholder did not elect to treat the PFIC as a QEF or

2. The shareholder made the QEF election for a tax year after the foreign corporation's first tax year as a PFIC during the shareholder's holding period and did not make the deemed sale election or the deemed dividend election.

Tax Consequences for Shareholders of a Section 1291 Fund

Shareholders of a section 1291 fund are subject to special rules when they receive an excess distribution (defined below) from, or dispose of the stock of, a section 1291 fund. A distribution may be partly or wholly an excess distribution. The entire amount of gain from the disposition of a section 1291 fund is treated as an excess distribution.

Excess distributions. An excess distribution is the part of the distribution received from a section 1291 fund in the current tax year that is greater than 125% of the average distributions received in respect to such stock by the shareholder during the 3 preceding tax years (or, if shorter, the portion of the shareholder's holding period before the current tax year). No part of a distribution received or deemed received during the first tax year of the shareholder's holding period of the stock will be treated as an excess distribution.

The excess distribution is determined on a per share basis and is allocated to each day in the shareholder's holding period of the stock. See section 1291(b)(3) for adjustments that are made when determining if a distribution is an excess distribution.

Portions of an excess distribution are treated differently. The portions allocated to the days in the current tax year and the shareholder's tax years in its holding period before the foreign corporation qualified as a PFIC (pre-PFIC years) are taxed as ordinary income. The portions allocated to the days in the shareholder's tax years (other than the current tax year) in its holding period when the foreign corporation was a PFIC are not included in income, but are subject to the deferred tax amount, as defined in section 1291(c).

See the instructions for Part IV on page 6.

Exempt organizations. If a shareholder of a PFIC is a tax exempt organization, the tax and interest rules of section 1291 will apply only if the dividend from the PFIC will be taxable to the shareholder under subchapter F.

Mark-to-Market Election for PFIC Stock

A U.S. shareholder of a PFIC may elect to mark the PFIC stock to market if the stock is "marketable stock."

Marketable stock. The following PFIC stock is marketable.

- Stock that is regularly traded on:

1. A national securities exchange that is registered with the Securities and Exchange Commission (SEC),

2. The national market system established under section 11A of the Securities and Exchange Act of 1934, or

3. A foreign securities exchange that is regulated or supervised by a governmental authority of the country in which the market is located and has the characteristics described in Regulations section 1.1296(e)-1(c)(1)(ii).

- Stock in a foreign corporation if the foreign corporation:

1. Offers for sale, or has outstanding, any stock of which it is the issuer and which is redeemable at its net asset value and

2. Satisfies the conditions described in Regulations section 1.1296(e)-1(d).

- Any option on marketable stock described above.

For additional information, including special rules for RICs that own PFIC stock, see Regulations section 1.1296(e)-1.

Tax Consequences

If the PFIC shareholder elects to mark the stock to market, the shareholder either:

1. Includes in income each year an amount equal to the excess, if any, of the fair market value of the PFIC stock as of the close of the taxable year over the shareholder's adjusted basis in such stock or

2. Is allowed a deduction for the excess, if any, of the adjusted basis of the PFIC stock over its fair market value as of the close of the taxable year.

See section 1296(d) for limitations.

Basis adjustment. The shareholder's adjusted basis in the PFIC stock is increased by the amount included in income and decreased by any deductions allowed. If the stock is owned indirectly through foreign entities, the adjustments to the stock's basis shall apply to the stock in the hands of the person actually holding the stock, but only for purposes of applying the PFIC rules to the tax treatment of the U.S. person.

Additional Information Required

A shareholder of a PFIC must attach certain information to Form 8621. This information includes:

- The number of shares in each class of stock owned by the shareholder at the beginning of its tax year;
- Any changes in the number of shares in each class of stock during its tax year and the dates of such changes; and
- The number of shares in each class of stock at the end of its tax year.

Specific Instructions

Important: *All line references to Form 1120 and Form 1040 are to the 2000 forms. Other entities should use the comparable line on their income tax return.*

Address and Identifying Number

Address. Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the shareholder has a P.O. box, enter the box number instead.

Identifying number. Individuals should enter a social security number or a taxpayer identification number issued by the IRS. All other entities, enter employer identification number.

Part I—Elections

A—Election To Treat the PFIC as a QEF (Section 1295 Election)

Who May Make the Election

Note: *A **separate** election must be made for each PFIC that the shareholder wants to treat as a QEF.*

Generally, a U.S. person that owns stock in a PFIC, directly or indirectly, may make Election A to treat the PFIC as a QEF.

Exception. A tax exempt organization that is not taxable under section 1291 may not make the election. In addition, a tax exempt organization that is a member of a domestic pass-through entity is not subject to a QEF election made by the pass-through entity.

Chain of ownership. In a chain of ownership, only the first U.S. person that is a direct or indirect shareholder of the PFIC may make the election.

Pass-through entities. A QEF election made by a domestic partnership, S corporation, or estate is made in the pass-through entity's capacity as a shareholder of a PFIC. The entity will include the QEF earnings as income for the year in which the PFIC's taxable year ends. The interest holder in the pass-through entity takes the income into account under the rules applicable to inclusions of income from a pass-through entity.

Affiliated groups. The common parent of an affiliated group of corporations that joins in filing a consolidated income tax return makes the QEF election for all members of the affiliated group that are shareholders in the PFIC. An election by a common parent is effective for all members of the group that own stock in the PFIC at the time the election is made or any time thereafter.

For more information on who may make the election, see Regulations section 1.1295-1(d).

When To Make the Election

Generally, a shareholder must make the election to be treated as a QEF by the due date, including extensions, for filing the shareholder's income tax return for the first tax year to which the election will apply (the “election due date”). See **Retroactive election** below for exceptions. The foreign corporation will be treated as a QEF with respect to the shareholder for the tax year in which the election is made and for each subsequent tax year of the foreign corporation ending with or within a taxable year of the shareholder for which the election is effective. For more information on making a retroactive election, see Regulations section 1.1295-3.

Retroactive election. A shareholder may make a QEF election for a taxable year **after** the election due date (a retroactive election), only if:

- The shareholder has preserved its right to make a retroactive election under the protective statement regime (described below) or
- The shareholder obtains the permission of the IRS to make a retroactive election under the consent regime (described below).

Protective regime. Under the protective statement regime, a shareholder may reserve the ability to make a retroactive election if the shareholder:

1. Reasonably believed, as of the due date for making the QEF election, that the foreign corporation was not a PFIC for its taxable year that ended during that year (retroactive election year);

2. Filed a Protective Statement (see below) with respect to the foreign corporation, applicable to the retroactive election year, in which the shareholder describes the basis for its reasonable belief;

3. Extended, in the protective statement, the periods of limitations on the assessment of taxes under the PFIC rules for all taxable years to which the protective statement applies; and

4. Complied with the other terms and conditions of the protective statements.

The Protective Statement must be attached to the shareholder's tax return for the shareholder's first taxable year to which the statement will apply. For more information, see Regulations section 1.1295-3(c).

Consent regime. Under the consent regime, a shareholder that has not satisfied the requirements of the protective regime may request that the IRS permit a retroactive election. The consent regime applies only if:

1. The shareholder reasonably relied on tax advice of a competent and qualified tax professional;

2. The interest of the U.S. government will not be prejudiced if the consent is granted; and

3. The shareholder requests consent before the PFIC status issue is raised on audit.

See Regulations section 1.1295-3(f)(4) for the procedures for requesting a ruling on making a retroactive election under the consent regime.

Special Rules

- The election can only be revoked with the consent of the IRS.
- The election is not terminated if the foreign corporation ceases to be a PFIC.
- For any tax year in which the foreign corporation is not a PFIC under section 1297(a) or is not treated as a PFIC under section 1298(b)(1), the corporation will **not** be treated as a QEF and the reporting rules of section 1295 will not apply. See the instructions for Part II.
- Complete termination or transfer of a shareholder's direct or indirect interest will not terminate the section 1295 election with respect to the foreign corporation. For more information, see Regulations section 1.1295-1(c)(2).

How To Make the Election

- For the tax year in which the section 1295 election is made, the shareholder must do the following.

1. Check box A in Part I of Form 8621.

2. Complete the applicable lines of Part II. Include the information provided in the PFIC Annual Information Statement, the Annual Intermediary Statement, or a combined statement (see below) received from the PFIC.

3. Attach Form 8621 to a timely filed tax return.

- For each subsequent tax year in which the election applies and the corporation is treated as a QEF, the shareholder must:

1. Complete the applicable lines of Part II and

2. Attach Form 8621 to a timely filed tax return.

Annual Election Requirements of the PFIC or Intermediary

PFIC Annual Information Statement. For each year of the PFIC ending in a taxable year of a shareholder to which the section 1295 election applies, the PFIC must provide the shareholders with a PFIC Annual Information Statement. The statement must contain certain information, including:

1. The shareholder's pro rata share of the PFIC's ordinary earnings and net capital gain for that taxable year or

2. Sufficient information to enable the shareholder to calculate its pro rata share of the PFIC's ordinary earnings and net capital gain.

See Regulations section 1.1295-1(g)(1).

Annual Intermediary Statement. If the shareholder holds stock in a PFIC through an intermediary, an Annual Intermediary Statement may be issued in lieu of the PFIC Annual Information Statement. For the definition of an intermediary, see Regulations section 1.1295-1(j). For details on the information that should be included in the Annual Intermediary Statement, see Regulations section 1.1295-1(g)(3).

Combined statements. A PFIC that owns directly or indirectly any shares of stock in one or more PFICs may provide its shareholders with a PFIC Annual Information Statement in which it combines its own required information and representations with the information and representations of any lower-tier PFIC. Similarly, an intermediary through which a shareholder indirectly holds stock in more than one PFIC may provide the shareholder a combined Annual Intermediary Statement. For more information, see Regulations section 1.1295-1(g)(4).

Documentation. For all taxable years subject to the section 1295 election, the shareholder must keep copies of all Forms 8621, attachments, and all PFIC Annual Information Statements or Annual Intermediary Statements. Failure to produce these documents at the request of the IRS will result in invalidation or termination of the section 1295 election. In rare and unusual circumstances, the IRS will consider requests for alternative documentation to verify the ordinary earnings and net capital gain of the PFIC.

B—Deemed Sale Election

Who May Make the Election

This election may be made by a U.S. person that elects to treat a PFIC as a QEF for a foreign corporation's tax year following its first tax year as a PFIC included in the shareholder's holding period (an unpedigreed QEF). A shareholder making this election is deemed to have sold the PFIC stock as of the first day of the PFIC's first tax year as a QEF (the qualification date) for its fair market value.

Special Rules

For purposes of this election, the following apply.

- The gain from the deemed sale is taxed as an excess distribution received on the qualification date.
- The basis of the stock is increased by the gain recognized. The manner in which the basis adjustment is made depends on whether the shareholder is a direct or indirect shareholder. See Regulations section 1291-10(f).
- The new holding period of the stock begins on the qualification date.

- The election may be made for stock on which the shareholder will realize a loss, but that loss cannot be recognized. In addition, there is no basis adjustment for a loss.
- After the deemed sale, the PFIC becomes a pedigreed QEF with respect to the shareholder.

When To Make the Election

This election must be made by the due date, including extensions, of the shareholder's original tax return (or by filing an amended return within 3 years of the due date) for the tax year that includes the qualification date.

How To Make the Election

To make this election:

1. Check box B in Part I,

2. Enter the gain or loss on line 10f of Part IV, and

3. If a gain is entered, complete line 11 to report the tax and interest due on the excess distribution.

For more information regarding making Election B, see Regulations section 1.1291-10.

C—Deemed Dividend Election

Who May Make the Election

This election may be made by a U.S. person that elects to treat a PFIC that is also a CFC as a QEF for the foreign corporation's tax year following its first tax year as a PFIC included in the shareholder's holding period (an unpedigreed QEF).

A shareholder making this election is treated as receiving a dividend of its pro rata share of the post-1986 earnings and profits (defined below) of the PFIC on the qualification date (defined under **B—Deemed Sale Election** on page 3). The deemed dividend is taxed as an excess distribution, allocated only to the days in the shareholder's holding period during which the foreign corporation qualified as a PFIC. For this purpose, the shareholder's holding period ends on the day before the qualification date.

Special Rules

For purposes of this election, the following apply.

- The term “post-1986 earnings and profits” means earnings and profits of the PFIC accumulated in tax years beginning after 1986 during which the CFC was a PFIC and while the shareholder held the stock, and ending on the day before the qualification date.
- The basis of the shareholder's stock is increased by the amount of the deemed dividend.
- The shareholder's holding period (solely for purposes of applying the PFIC rules after the deemed dividend election) begins on the qualification date.

When To Make the Election

This election must be made by the due date, including extensions, of the shareholder's original tax return (or by filing an amended return within 3 years of the due date) for the tax year that includes the qualification date.

How To Make the Election

To make this election:

1. Check box C in Part I,

2. Enter the dividend on line 10e of Part IV as an excess distribution, and

3. Complete line 11 to figure the tax and interest due on the excess distribution.

Attachments. The shareholder must attach a statement to Form 8621 that demonstrates the calculation of its pro rata share of the post-1986 earnings and profits of the PFIC that are treated as distributed to it. The post-1986 earnings and profits may be reduced (but not below zero) by the amount that the shareholder satisfactorily demonstrates was previously included in the income of another U.S. person. The shareholder demonstrates this by including in the statement mentioned above the following information:

- The name, address, and identifying number of the U.S. person and the amount that was included in income;
- The tax year in which the amount was previously included in income;
- The law under which the amount was previously included in income;
- A description of the transaction in which the shareholder acquired the stock of the PFIC from the other U.S. person; and
- The law under which the shareholder's holding period includes the holding period of the other U.S. person.

For more information on making Election C, see Regulations section 1.1291-9.

D—Election To Extend Time for Payment of Tax

Who May Make the Election

A shareholder of a QEF may make Election D to extend the time for payment of the tax on its share of the undistributed earnings of the fund for the current tax year. If a U.S. partnership is a shareholder of a QEF, the election is made at the partner level.

Special Rules

- If this election is made, interest will be imposed on the amount of the deferred tax.
- The election cannot be made for any earnings on shares disposed of during the tax year or for a tax year that any portion of the shareholder's pro rata share of the fund's earnings is included in income under section 551 (relating to foreign personal holding companies) or section 951 (relating to CFCs).

When To Make the Election

Generally, this election must be made by the due date, including extensions, of the shareholder's income tax return for the tax year for which the shareholder reports the income related to the deferred tax.

How To Make the Election

To make this election:

1. Check box D in Part I and

2. Complete lines 3a through 4c of Part II.

For more information on making Election D, see Temporary Regulations section 1.1294-1T.

E—Election To Recognize Gain on Deemed Sale of PFIC Stock

Who May Make the Election

This election may be made by:

- A U.S. person that is a shareholder of a foreign corporation that no longer qualifies as a PFIC under either the income or asset test of section 1297(a) or
- A U.S. shareholder (as defined in section 951(b)) that owns stock in a foreign corporation that is a CFC and is not treated as a PFIC with respect to the U.S. shareholder under section 1297(e).

Such persons may elect to treat the stock of the foreign corporation as sold on the last day of the last tax year of the foreign corporation in which it was treated as a PFIC (termination date) for its fair market value on that date.

Special Rules

- The gain from the deemed sale is taxed as an excess distribution.
- Any shareholder who owns stock in a CFC during its last taxable year as a PFIC, may, alternatively, apply the deemed dividend election rules under Election C. The deemed dividend is taxed as an excess distribution.
- The basis in the stock is increased by the amount of the excess distribution taxed to the shareholder making Election E.
- The new holding period of the stock begins on the date after the deemed sale.
- Election E may be made for stock on which there would be a loss, but the loss is not recognized.

For more information on making this election, see Temporary Regulations section 1.1297-3T.

When To Make the Election

This election is made either:

1. With the original return for the tax year of the shareholder that includes the last day of the last year of the foreign corporation during which it qualified as a PFIC or

2. By filing an amended return for the tax year that includes the date of the deemed sale.

How To Make the Election

To make this election:

1. Check box E in Part I and

2. Enter the gain or loss on line 10f of Part IV. If a gain, complete the rest of Part IV.

See Part V for annual reporting requirements for outstanding section 1294 elections.

F—Election To Mark-to-Market PFIC Stock

Who May Make the Election

Election F may be made by:

- A U.S. person who owns (or is treated as owning) "marketable stock " (defined on page 2) in a PFIC at the close of such person's tax year or
- A RIC that meets the requirements of section 1296(e)(2).

For more information, see section 1296. See section 1296(g) for information regarding stock owned through certain foreign entities.

When To Make the Election

This election must be made with the original return for the tax year in which the stock is marked-to-market. Once made, the election applies to all subsequent tax years unless the stock ceases to be marketable or the IRS consents to the revocation of the election.

How To Make the Election

To make the election:

1. Check box F in Part I,

2. Complete Part III to report the gain or loss, and

3. Complete Part IV if the tax and interest rules of section 1291 (explained below) apply.

Coordination with section 1291. The tax and interest rules of section 1291 generally do not apply to PFIC stock that a shareholder elects to mark-to-market. However, if **(1)** the PFIC stock is marked-to-market later than the beginning of the shareholder's holding period for the stock and **(2)** for each tax year beginning after 1986 in which the corporation was a PFIC (and that included any part of the shareholder's holding period in such stock), but such corporation was not a QEF, then the rules of section 1291 shall apply.

This coordination rule applies to:

- Any distributions with respect to such stock or dispositions of the stock for the first taxable year that the mark-to-market election is made and
- Any amount which would, but for section 1291, have been included in gross income as a result of electing to mark-to-market PFIC stock in the same manner as if such amount were gain on the disposition of such stock.

Special rules apply to RICs. For more information, see section 1296(j).

Part II—Income From a QEF

Important: *For any tax year in which the foreign corporation is not treated as a QEF because it is not a PFIC, the shareholder is not required to complete Part II. However, the section 1295 election is not terminated. If the foreign corporation is treated as a PFIC in any subsequent tax year, the original election continues to apply and the shareholder must include in Part II its pro rata share of ordinary earnings and net capital gain and comply with the section 1295 annual reporting requirements.*

Lines 1 and 2

Lines 1a and 2a. Enter on lines 1a and 2a, respectively, your pro rata share of the ordinary earnings and net capital gain of the QEF. The PFIC should provide these amounts or information that will help you determine your pro rata share. See **Annual Election Requirements of the PFIC or Intermediary** on page 3.

Lines 1b and 2b. Your share of the ordinary earnings and net capital gain of the QEF is reduced by the amounts you include in income under section 551 or 951 for the tax year with respect to the QEF. Your share of these amounts may also be reduced as provided in section 1293(g).

Line 1c. This amount is treated as an ordinary dividend on your tax return.

For individuals, include this amount in the total on Form 1040, line 9. For corporations, include this amount in the total on Form 1120, Schedule C, line 13.

Line 2c. See the instructions for the Schedule D used for your tax return. Portions of the net capital gain may have to be reported on different lines of Schedule D, depending upon the information provided by the QEF concerning the section 1(h) categories of net capital gains and amounts thereof, derived by the QEF. See Regulations section 1.1293-1(a)(2) for 3 options a QEF may use to report and calculate capital gain.

Line 3

If you receive a distribution from the QEF during the current tax year, the distribution is first treated as a distribution out of the earnings and profits of the QEF accumulated during the year. If the total amount distributed (line 3b) exceeds the amount included in income (line 3a), the excess is treated as distributed out of the most recently accumulated earnings and profits and is taxable to you unless you satisfactorily demonstrate that the excess was previously included in the income of another U.S. person. To satisfactorily demonstrate this, the QEF shareholder must attach a statement to Form 8621 that includes the information listed under **Attachments** on page 4.

Line 4

Line 4a. Enter the total tax on your total taxable income (including your share of undistributed earnings of the QEF) for the tax year (e.g., from Form 1120, Schedule J, line 11, or Form 1040, line 57).

For this purpose, **undistributed earnings** is the excess, if any, of the amount included in gross income under section 1293(a) over the sum of the amount of any distribution and the portion of the amount attributable to stock in the QEF that you transferred or otherwise disposed of before the end of the QEF's tax year.

Line 4b. Calculate your total tax as if your total taxable income did not include your share of the undistributed earnings of the QEF (line 3e). Enter this amount on line 4b.

Line 4c. For corporations, enter this tax on Form 1120, Schedule J, in brackets to the left of the entry space for line 11. Subtract that amount from the total of lines 8 through 10 and enter the difference on line 11.

For individuals, enter this tax on Form 1040 in brackets to the left of the entry space for line 57. Subtract that amount from the total of lines 51 through 56, and enter the difference on line 57.

Part III—Gain or (Loss) From Mark-to-Market Election

Lines 7 Through 9

If the fair market value of the PFIC stock as of the close of the tax year is more than its adjusted basis in the stock, the excess is a gain and is treated as ordinary income.

If the adjusted basis of the stock is more than the fair market value, the excess is allowed as a deduction, but only to the extent of the lesser of:

1. The amount of the excess (line 7) or

2. The excess of the amounts that were included in income under the mark-to-market rules for prior tax years over the amounts allowed as a deduction under the mark-to-market rules for prior tax years (line 8). See section 1296(d). This amount is treated as an ordinary loss.

Line 9. Corporations and individuals should include the income or (loss) in the "other income" line of their tax returns. Other entities should include this amount on the comparable line of their tax return.

If a CFC owns stock in a PFIC that makes the mark-to-market election, any amount includible (or deductible) is treated as foreign personal holding company income (or a deduction allocable to foreign personal holding company income).

Part IV—Distributions and Disposition of Stock in a Section 1291 Fund

Note: *A distribution to a corporation claiming the foreign tax credit for deemed paid foreign taxes includes foreign taxes deemed paid. See* **Form 1118,** *Foreign Tax Credits—Corporations (Rev. January 1999), Schedule C, Part I, column 10 and Parts II and III, column 8 for the gross-up amount.*

Line 10

Line 10c. Divide the amount on line 10b by 3. If the number of tax years in your holding period preceding the current tax year is less than 3, divide the amount on line 10b by that number.

Line 10d. For corporations, include this amount on Form 1120, Schedule C, line 13. For individuals, include this amount as part of the total on Form 1040, line 9.

Line 10e. If there was more than one distribution during the tax year, the excess distribution is apportioned among all actual distributions. Each apportioned amount is treated as a separate excess distribution.

Line 10f. Gain recognized on the disposition of stock of a section 1291 fund is treated as an excess distribution. Losses are not recognized. Stock of a section 1291 fund is considered disposed of if it is sold, transferred, or pledged.

Line 11

Lines 11a and 11b. Determine the taxation of the excess distribution on a separate sheet and attach it to Form 8621. Divide the amount on line 10e or 10f, whichever applies, by the number of days in your holding period. The holding period of the stock is treated as ending on the date of distribution or disposition.

Special rules apply to the holding period if:

- Election C is made (see the instructions for Election C on page 4) or
- The mark-to-market election (Election F) is made or was made in a prior year (see section 1291(a)(3)(A)(ii)).

Determine the amount allocable to each tax year in your holding period by adding the amounts allocated to the days in each such tax year. Add the amounts allocated to the pre-PFIC and current tax years. Enter the sum on line 11b.

This amount is treated as ordinary income (e.g., individuals and corporations should enter this amount on the “other income” line of their tax return).

Line 11c. Determine the increase in tax for each tax year in your holding period (other than the current tax year and pre-PFIC years). An increase in tax is determined for each PFIC year by multiplying the part of the excess distribution allocated to each year (as determined on line 11a) by the highest rate of tax under section 1 or section 11, whichever applies, in effect for that tax year. Add the increases in tax computed for all years. Enter the aggregate increases in tax (before credits) on line 11c.

Line 11d. To figure the foreign tax credit, the shareholder of a section 1291 fund figures the total creditable foreign taxes attributable to the distribution. This amount includes the direct foreign taxes paid by the shareholder on the distribution (for example, withholding taxes) and for 10% or greater corporate shareholders, any taxes deemed paid under section 902. Both the direct and indirect foreign taxes must be creditable under general foreign tax credit principles and the shareholder must choose to claim the foreign tax credit for the current tax year.

The excess distribution taxes (the creditable foreign taxes attributable to an excess distribution) are determined by apportioning the total creditable foreign taxes between the part of the distribution that is an excess distribution and the part that is not.

The excess distribution taxes are allocated in the same manner as the excess distribution is allocated. See **Excess distributions** on page 2. Those taxes allocated to pre-PFIC tax years and the current tax year are taken into account for the current tax year under the general rules of the foreign tax credit.

The excess distribution taxes allocated to a PFIC year only reduce the increase in tax figured for that tax year (but not below zero). No carryover of any unused excess distribution taxes is allowed.

When you dispose of stock, the above foreign tax credit rules apply only to the part of the gain that, without regard to section 1291, would be treated under section 1248 as a dividend.

Line 11e. This amount is the aggregate increase in tax and is included on your tax return as additional taxes.

For individuals, enter this amount on Form 1040 to the left of the line 40 entry space. Write “Sec. 1291” next to the amount and include the amount as part of the total for line 40.

For corporations, enter this amount on Form 1120, Schedule J, to the left of the entry space for line 3. Write “Sec. 1291” next to the amount and include it as part of the total for line 3. Other entities should use the comparable line on their income tax return.

Line 11f. Interest is charged on each net increase in tax for the period beginning on the due date (without regard to extensions) of your income tax return for the tax year to which an increase in tax is attributable and ending with the due date (without regard to extensions) of your income tax return for the tax year of the excess distribution.

For individuals, enter the interest at the bottom right margin of Form 1040, page 1 and label it as “Sec. 1291 interest.” Include this amount in your check or money order payable to the United States Treasury. If you would otherwise receive a refund, reduce the refund by the interest due.

For corporations, enter this interest at the bottom right margin of Form 1120, page 1, and label it as “Sec. 1291 interest.” Include this amount in your check or money order payable to the United States Treasury. If you would otherwise receive a refund, reduce the refund by the interest due.

Part V—Status of Prior Year Section 1294 Elections and Termination of Section 1294 Elections

Each person who has made a section 1294 election must **(1)** annually report the status of that election and **(2)** report the termination of any section 1294 election that occurred during the tax year. See Temporary Regulations section 1.1294-1T(h).

Line 1. Enter the last day of each tax year for which you made a section 1294 election that is outstanding. Do not include an election made in the current tax year.

Line 2. Enter the undistributed earnings of the QEF for which the payment of tax was extended by the section 1294 election entered on line 1. If the election was partially terminated in a prior year, enter the remaining undistributed earnings.

Line 3. Enter the tax for which payment was extended by the section 1294 election entered on line 1. If the election was partially terminated in a previous tax year, enter the balance of the deferred tax.

Line 4. Enter the accrued interest (determined under section 6621) on the deferred tax. This is the interest accrued from the due date (not including extensions) of the return for the year for which the section 1294 election was made until the date the current year's return is filed.

Line 5. Enter the event(s) that occurred during the tax year that terminated one or more of the section 1294 elections reported on line 1. A section 1294 election may be terminated voluntarily. However, an election will terminate when any of the following events occur:

- An actual or deemed distribution of earnings to which the election is attributable (a loan, pledge, or guarantee by the QEF to or for the benefit of the taxpayer may cause a deemed distribution of the earnings);
- A disposition of stock in the fund, including a pledge by the taxpayer of stock as security for a loan; or
- A change of status of the QEF (i.e., a foreign corporation that is no longer a QEF or PFIC).

Line 6. Enter the earnings distributed or deemed distributed as a result of the events described on line 5. Earnings are treated as distributed out of the most recently accumulated earnings and profits. Accordingly, an event will first terminate the most recently made election.

An election may be terminated in whole or in part depending on the event causing the termination. Examples are as follows.

- A distribution of earnings will terminate an election only to the extent the election is attributable to the earnings distributed.
- A loan, pledge, or guarantee by the QEF will terminate an election to the extent of the lower of the undistributed earnings or the amount loaned, secured, or guaranteed.
- A disposition of stock will terminate all elections with respect to the undistributed earnings attributable to that stock.
- A change in status of the QEF will terminate **all** elections.

Line 7. Enter the deferred tax due from the termination of the section 1294 election. The deferred tax entered on line 3 is due if the election was completely terminated. If the election was only partially terminated, a proportionate amount of the deferred tax is due. That amount is determined by multiplying the amount entered on line 3 by a fraction, of which the numerator is the amount entered on line 6 and the denominator is the amount entered on line 2. The deferred tax is due by the due date of the shareholder's income tax return (without regard to extensions) for the year of termination.

When the election is terminated, corporations include the deferred tax as part of the total for Form 1120, Schedule J, line 11. Also enter the deferred tax to the left of line 11 and label it as "Sec. 1294 deferred tax."

For individuals, enter the deferred tax as part of the total for Form 1040, line 57. Also enter the deferred tax to the left of line 57, and label it as "Sec. 1294 deferred tax."

Line 8. Enter the interest accrued on the deferred tax. Interest accrues beginning on the due date (without regard to extensions) of your tax return for the tax year in which the section 1294 election is made, and ending with the due date (without regard to extensions) of your tax return for the tax year of the termination. Interest is computed using the rates and methods under section 6621.

For corporations, enter the amount of section 1294 interest at the bottom right margin of Form 1120, page 1 and label it as "Sec. 1294 interest." Also include this amount in your check or money order payable to the United States Treasury. If you would otherwise receive a refund, reduce the refund by the interest due.

For individuals, enter the interest from line 8 at the bottom right margin of Form 1040, page 1, and label it as "Sec. 1294 interest." Also include this amount in your check or money order payable to the United States Treasury. If you would otherwise receive a refund, reduce the amount of the refund by the amount of interest due.

Lines 9 and 10. Complete lines 9 and 10 only if you have partially terminated your section 1294 election. Enter on line 9 the part of the deferred tax outstanding after the partial termination of the section 1294 election. This amount should equal line 3 minus line 7.

Enter on line 10 the accrued interest remaining after the partial termination of the section 1294 election. This amount should equal line 4 minus line 8.

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You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping .... 13 hr., 38 min.
Learning about the law or the form .... 6 hr., 27 min.
Preparing and sending the form to the IRS .... 6 hr., 58 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743–0001. **Do not** send the tax form to this office. Instead, see **When and Where To File** on page 1.