

§ 1.1298-1

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§ 1.1298-1 Section 1298(f) annual reporting requirements for United States persons that are shareholders of a passive foreign investment company.

(a) *Overview.* This section provides rules regarding the reporting requirements under section 1298(f) applicable to a United States person that is a shareholder (as defined in § 1.1291-1(b)(7)) of a passive foreign investment company (PFIC). Paragraph (b) of this section provides the section 1298(f) annual reporting requirements generally applicable to United States persons. Paragraph (c) of this section sets forth exceptions to reporting for certain shareholders. Paragraph (d) of this section provides rules regarding the time and manner of filing the annual report.

Paragraph (e) of this section sets forth the requirement to file a separate annual report with respect to each PFIC. Paragraph (f) of this section coordinates the requirement to file an annual report under section 1298(f) with the requirement to file an annual report under other provisions of the Internal Revenue Code (Code). Paragraph (g) of this section sets forth examples illustrating the application of this section. Paragraph (h) of this section provides effective/applicability dates.

(b) *Requirement to file—(1) General rule.* Except as otherwise provided in this section, a United States person that is a shareholder of a PFIC must complete and file Form 8621, “Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund” (or successor form), under section 1298(f) and these regulations for the PFIC if, during the shareholder’s taxable year, the shareholder—

- (i) Directly owns stock of the PFIC;
- (ii) Is an indirect shareholder under § 1.1291-1(b)(8) that holds any interest in the PFIC through one or more entities, each of which is foreign; or
- (iii) Is an indirect shareholder under § 1.1291-1(b)(8)(iii)(D) that is treated under sections 671 through 678 as the owner of any portion of a trust described in section 7701(a)(30)(E) that owns, directly or indirectly through one or more entities, each of which is foreign, any interest in the PFIC.

(2) *Additional requirement to file for certain indirect shareholders—(i) General rule.* Except as otherwise provided in this section, an indirect shareholder that owns an interest in a PFIC through one or more United States persons also must file Form 8621 (or successor form) with respect to the PFIC under section 1298(f) and these regulations if, during the indirect shareholder’s taxable year, the indirect shareholder is—

(A) Treated as receiving an excess distribution (within the meaning of section 1291(b)) with respect to the PFIC;

(B) Treated as recognizing gain that is treated as an excess distribution (under section 1291(a)(2)) as a result of a disposition of the PFIC;

(C) Required to include an amount in income under section 1293(a) with respect to the PFIC (QEF inclusion);

(D) Required to include or deduct an amount under section 1296(a) with respect to the PFIC (MTM inclusion); or

(E) Required to report the status of a section 1294 election with respect to the PFIC (see § 1.1294-1T(h)).

(ii) *Exception to indirect shareholder reporting for certain QEF inclusions and MTM inclusions.* Except as otherwise provided in this paragraph (b)(2)(ii), the filing requirements under paragraph (b) of this section do not apply with respect to an interest in a PFIC owned by an indirect shareholder described in paragraph (b)(2)(i)(C) or (D) of this section if another shareholder through which the indirect shareholder owns such interest in the PFIC timely files Form 8621 (or successor form) with respect to the PFIC under paragraph (b)(1) or (2) of this section. However, the exception in this paragraph (b)(2)(ii) does not apply with respect to a PFIC owned by an indirect shareholder described in paragraph (b)(2)(i)(C) of this section that owns the PFIC through a domestic partnership or S corporation if the domestic partnership or S corporation does not make a qualified electing fund election with respect to the PFIC (see § 1.1293-1(c)(2)(ii), addressing QEF stock transferred to a pass through entity that does not make a section 1295 election).

(3) *Special rules for estates and trusts—*

(i) *Domestic liquidating trusts and fixed investment trusts.* A United States person that is treated under sections 671 through 678 as the owner of any portion of a trust described in section 7701(a)(30)(E) that owns, directly or indirectly, any interest in a PFIC is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the PFIC if the trust is either a domestic liquidating trust under § 301.7701-4(d) of this chapter created pursuant to a court order issued in a bankruptcy under Chapter 7 (11 U.S.C. 701 *et seq.*) of the Bankruptcy Code or a confirmed plan under Chapter 11 (11 U.S.C. 1101 *et seq.*) of the Bankruptcy Code, or a widely held fixed investment trust under § 1.671-5. Such a trust itself is treated as a shareholder for purposes of section

1298(f) and these regulations, and thus, except as otherwise provided in this section, the trust is required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the PFIC as provided in paragraphs (b)(1) and (2) of this section.

(ii) *Beneficiaries of foreign estates and trusts.* A United States person that is considered to own an interest in a PFIC because it is a beneficiary of an estate described in section 7701(a)(31)(A) or a trust described in section 7701(a)(31)(B) that owns, directly or indirectly, stock of a PFIC, and that has not made an election under section 1295 or 1296 with respect to the PFIC, is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the stock of the PFIC that it is considered to own through the estate or trust if, during the beneficiary's taxable year, the beneficiary is not treated as receiving an excess distribution (within the meaning of section 1291(b)) or as recognizing gain that is treated as an excess distribution (under section 1291(a)(2)) with respect to the stock.

(c) *Exceptions—*(1) *Exception if shareholder is a tax-exempt entity.* A shareholder that is an organization exempt under section 501(a) to the extent that it is described in section 501(c), 501(d), or 401(a), a state college or university described in section 511(a)(2)(B), a plan described in section 403(b) or 457(b), an individual retirement plan or annuity as defined in section 7701(a)(37), or a qualified tuition program described in section 529, a qualified ABLE program described in 529A, or a Coverdell education savings account described in section 530 is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC unless the income derived with respect to the PFIC stock would be taxable to the organization under subchapter F of Subtitle A of the Code.

(2) *Exception if aggregate value of shareholder's PFIC stock is \$25,000 or less, or value of shareholder's indirect PFIC stock is \$5,000 or less—*(i) *General rule.* A shareholder is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a section 1291 fund (as defined

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in § 1.1291-1(b)(2)(v)) for a shareholder's taxable year if—

(A) On the last day of the shareholder's taxable year:

(1) The value of all PFIC stock owned directly or indirectly under section 1298(a) and § 1.1291-1(b)(8) by the shareholder is \$25,000 or less; or

(2) The section 1291 fund stock is indirectly owned by the shareholder under section 1298(a)(2)(B) and § 1.1291-1(b)(8)(ii)(B), and the value of the section 1291 fund stock indirectly owned by the shareholder is \$5,000 or less;

(B) The shareholder is not treated as receiving an excess distribution (within the meaning of section 1291(b)) with respect to the section 1291 fund during the taxable year or as recognizing gain treated as an excess distribution under section 1291(a)(2) as the result of a disposition of the section 1291 fund during the taxable year; and

(C) An election under section 1295 has not been made to treat the section 1291 fund as a qualified electing fund with respect to the shareholder.

(ii) *Determination of the \$25,000 threshold in the case of indirect ownership.* For purposes of determining the value of stock held by a shareholder for purposes of paragraph (c)(2)(i)(A)(I) of this section, the shareholder must take into account the value of all PFIC stock owned directly or indirectly under section 1298(a) and § 1.1291-1(b)(8), except for PFIC stock that is—

(A) Owned through another United States person that itself is a shareholder of the PFIC (including a domestic partnership or S corporation treated as a shareholder of a PFIC for purposes of information reporting requirements applicable to a shareholder);

(B) Owned through a PFIC under section 1298(a)(2)(B) and § 1.1291-1(b)(8)(ii)(B); or

(C) Marked to market for the shareholder's taxable year under any provision of chapter 1 of the Internal Revenue Code other than section 1296, provided the rules of § 1.1296-1(i)(2) and (3) do not apply to the shareholder with respect to the PFIC stock pursuant to § 1.1291-1(c)(4)(ii) for the shareholder's taxable year.

(iii) *Application of the \$25,000 exception to shareholders who file a joint return.* In the case of a joint return, the excep-

tion described in paragraph (c)(2)(i)(A)(I) of this section shall apply if the value of all PFIC stock owned directly or indirectly (as determined under section 1298(a), § 1.1291-1(b)(8), and paragraph (c)(2)(ii) of this section) by both spouses is \$50,000 or less, and all of the other applicable requirements of paragraph (c)(2) of this section are met.

(iv) *Reliance on periodic account statements.* A shareholder may rely upon periodic account statements provided at least annually to determine the value of a PFIC unless the shareholder has actual knowledge or reason to know based on readily accessible information that the statements do not reflect a reasonable estimate of the PFIC's value.

(3) *Exception for PFIC stock marked to market under a provision other than section 1296.* A shareholder is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC for any taxable year in which the PFIC is marked to market under any provision of chapter 1 of the Internal Revenue Code other than section 1296, provided the rules of § 1.1296-1(i)(2) and (3) do not apply to the shareholder with respect to the PFIC pursuant to § 1.1291-1(c)(4)(ii) for the taxable year.

(4) *Exception for PFIC stock held through certain foreign pension funds.* A shareholder who is a member or beneficiary of, or participant in, a plan, trust, scheme, or other arrangement that is treated as a foreign pension fund (or equivalent) under an income tax treaty to which the United States is a party and that owns, directly or indirectly, an interest in a PFIC is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the PFIC interest if, pursuant to the applicable income tax treaty, the income earned by the foreign pension fund may be taxed as the income of the shareholder only when and to the extent the income is paid to, or for the benefit of, the shareholder.

(5) *Exception for certain shareholders who are dual resident taxpayers—(i) General rule.* Subject to the provisions of paragraphs (c)(5)(ii) and (iii) of this section, a shareholder is not required

under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC for a taxable year, or the portion of a taxable year, in which the shareholder is a dual resident taxpayer (within the meaning of § 301.7701(b)-7(a)(1) of this chapter) who is treated as a nonresident alien of the United States for purposes of computing his or her United States income tax liability pursuant to § 301.7701(b)-7 of this chapter.

(ii) *Dual resident taxpayer filing as a nonresident alien at end of taxable year.* If a shareholder to whom this paragraph (c)(5) applies computes his or her U.S. income tax liability as a nonresident alien on the last day of the taxable year and complies with the filing requirements of § 301.7701(b)-7(b) and (c) of this chapter and, in particular, such individual timely files with the Internal Revenue Service Form 1040NR, "U.S. Nonresident Alien Income Tax Return," or Form 1040NR-EZ, "U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents," as applicable, and attaches thereto a properly completed Form 8833, "Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)," and the schedule required by § 1.6012-1(b)(2)(ii)(b) (if applicable), such shareholder will not be required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to the taxable year, or the portion of the taxable year, covered by Form 1040NR (or Form 1040NR-EZ).

(iii) *Dual resident taxpayer filing as resident alien at end of taxable year.* If a shareholder to whom this paragraph (c)(5) applies computes his or her U.S. income tax liability as a resident alien on the last day of the taxable year and complies with the filing requirements of § 1.6012-1(b)(2)(ii)(a) and, in particular such shareholder timely files with the Internal Revenue Service Form 1040, "U.S. Individual Income Tax Return," or Form 1040EZ, "Income Tax Return for Single and Joint Filers With No Dependents," as applicable, and attaches a properly completed Form 8833 to the schedule required by § 1.6012-1(b)(2)(ii)(a), such shareholder will not be required under section 1298(f) and these regulations to file Form 8621 (or successor form) with re-

spect to the portion of the taxable year reflected on the schedule to such Form 1040 or Form 1040EZ required by § 1.6012-1(b)(2)(ii)(a).

(6) *Exception for certain domestic partnerships.* A shareholder that is a domestic partnership is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC directly or indirectly held by the domestic partnership for a taxable year if each person that directly or indirectly owns an interest in the domestic partnership for its taxable year in which or with which the taxable year of the partnership ends is either—

(i) Not a shareholder of the PFIC as defined by § 1.1291-1(b)(7);

(ii) A tax-exempt entity or account not required to file Form 8621 with respect to the stock of the PFIC under paragraph (c)(1) of this section;

(iii) A dual resident taxpayer not required to file Form 8621 with respect to the stock of the PFIC under paragraph (c)(5) of this section; or

(iv) A domestic partnership not required to file Form 8621 with respect to the stock of the PFIC under this paragraph (c)(6).

(7) *Exception for certain short-term ownership of PFIC stock.* A shareholder is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a section 1291 fund (as defined in § 1.1291-1(b)(2)(v)) for a taxable year when the shareholder—

(i) Acquires the section 1291 fund in the taxable year or the immediately preceding taxable year;

(ii) Is a shareholder of the section 1291 fund for a total of 30 days or less during the period beginning 29 days before the first day of the shareholder's taxable year and ending 29 days after the close of the shareholder's taxable year; and

(iii) Is not treated as receiving an excess distribution (within the meaning of section 1291(b)) with respect to the section 1291 fund, including any gain recognized that is treated as an excess distribution under section 1291(a)(2) as a result of the disposition of the section 1291 fund.

(8) *Exception for certain bona fide residents of certain U.S. territories.* A shareholder is not required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC for a taxable year when the shareholder—

(i) Is a bona fide resident (as defined by section 937(a)) of Guam, the Northern Mariana Islands, or the United States Virgin Islands; and

(ii) Is not required to file an income tax return with the Internal Revenue Service with respect to such taxable year.

(9) *Exception for taxable years ending before December 31, 2013.* A United States person is not required under section 1298(f) and these regulations to file an annual report with respect to a PFIC for a taxable year of the United States person ending before December 31, 2013.

(d) *Time and manner for filing.* A United States person required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to a PFIC must attach the form to its Federal income tax return (or information return, if applicable) for the taxable year to which the filing obligation relates on or before the due date (including extensions) for the filing of the return, or must separately file the form in accordance with the instructions for the form when the United States person is not required to file a Federal income tax return (or information return, if applicable) for the taxable year. In the case of any failure to report information that is required to be reported pursuant to section 1298(f) and these regulations, the time for assessment of tax will be extended pursuant to section 6501(c)(8).

(e) *Separate annual report for each PFIC—(1) General rule.* If a United States person is required under section 1298(f) and these regulations to file Form 8621 (or successor form) with respect to more than one PFIC, the United States person must file a separate Form 8621 (or successor form) for each PFIC.

(2) *Special rule for shareholders who file a joint return.* United States persons that file a joint return may file a single Form 8621 (or successor form) with

respect to a PFIC in which they jointly or individually own an interest.

(f) *Coordination rule.* A United States person that is a shareholder of a PFIC may file a single Form 8621 (or successor form) with respect to the PFIC that contains all of the information required to be reported pursuant to section 1298(f) and these regulations and any other information reporting requirements or election rules under other provisions of the Code.

(g) *Examples.* The following examples illustrate the rules of this section:

Example 1. General requirement to file. (i) *Facts.* In 2013, J, a United States citizen, directly owns an interest in Partnership X, a domestic partnership, which, in turn, owns an interest in A Corp, which is a PFIC. In addition, J directly owns an interest in Partnership Y, a foreign partnership, which, in turn, owns an interest in A Corp. Neither J nor Partnership X has made a qualified electing fund election under section 1295 or a mark to market election under section 1296 with respect to A Corp. As of the last day of 2013, the value of Partnership X's interest in A Corp is \$200,000, and the value of J's proportionate share of Partnership Y's interest in A Corp is \$100,000. During 2013, J is not treated as receiving an excess distribution or recognizing gain treated as an excess distribution with respect to A Corp. Partnership X timely files a Form 8621 under section 1298(f) and paragraph (b)(1) of this section with respect to A Corp for 2013.

(ii) *Results.* J is the first United States person in the chain of ownership with respect to J's interest in A Corp held through Partnership Y. Under paragraph (b)(1) of this section, J must file a Form 8621 under section 1298(f) with respect to J's interest in A Corp held through Partnership Y because J is an indirect shareholder of A Corp under § 1.1291-1(b)(8) that holds PFIC stock through a foreign entity (Partnership Y), and there are no other United States persons in the chain of ownership. The fact that Partnership X filed a Form 8621 with respect to A Corp does not relieve J of the obligation under paragraph (b)(1) of this section to file a Form 8621 with respect to J's interest in A Corp held through Partnership Y. J has no filing obligation under section 1298(f) and paragraph (b)(2) of this section with respect to J's proportionate share of Partnership X's interest in A Corp.

Example 2. Application of the \$25,000 exception. (i) *Facts.* In 2013, J, a United States citizen, directly owns stock of A Corp, B Corp, and C Corp, all of which were PFICs during 2013. As of the last day of 2013, the value of J's interests was \$5,000 in A Corp, \$10,000 in B Corp, and \$4,000 in C Corp. J timely filed

an election under section 1295 to treat A Corp as a qualified electing fund for the first year in which A Corp qualified as a PFIC, and a mark-to-market election under section 1296 with respect to the stock of B Corp. J did not make a qualified electing fund election under section 1295 or a mark to market election under section 1296 with respect to C Corp. J did not receive an excess distribution or recognize gain treated as an excess distribution in respect of C Corp during 2013.

(ii) *Results.* Under paragraph (b)(1) of this section, J must file separate Forms 8621 with respect to A Corp and B Corp for 2013. However, J is not required to file a Form 8621 with respect to C Corp because J owns, in the aggregate, PFIC stock with a value of less than \$25,000 on the last day of J's taxable year. C Corp is not subject to a qualified electing fund election or mark to market election with respect to J, and J did not receive an excess distribution in respect of C Corp or recognize gain treated as an excess distribution in respect of C Corp during 2013. Therefore, J qualifies for the \$25,000 exception in paragraph (c)(2) of this section with respect to C Corp.

Example 3. Application of the \$25,000 exception to indirect shareholder. (i) *Facts.* E, a United States citizen, directly owns an interest in Partnership X, a domestic partnership. Partnership X, in turn, directly owns an interest in A Corp and B Corp, both of which are PFICs. Partnership X timely filed an election under section 1295 to treat B Corp as a qualified electing fund for the first year in which B Corp qualified as a PFIC. In addition, E directly owns an interest in C Corp, which is a PFIC. C Corp, in turn, owns an interest in D Corp, which is a PFIC. E has not made a qualified electing fund election under section 1295 or a mark to market election under section 1296 with respect to A Corp, C Corp, or D Corp. As of the last day of 2013, the value of Partnership X's interest in A Corp is \$30,000, the value of Partnership X's interest in B Corp is \$30,000, the value of E's indirect interest in A Corp is \$10,000, the value of E's indirect interest in B Corp is \$10,000, the value of E's interest in C Corp is \$20,000, and the value of C Corp's interest in D Corp is \$10,000. During 2013, E did not receive an excess distribution, or recognize gain treated as an excess distribution, with respect to A Corp, C Corp, or D Corp. Partnership X timely files Forms 8621 under section 1298(f) and paragraph (b)(1) of this section with respect to A Corp and B Corp for 2013.

(ii) *Results.* Under paragraph (b) of this section, E does not have to file a Form 8621 under section 1298(f) and these regulations with respect to A Corp because E is not the United States person that is at the lowest tier in the chain of ownership with respect to A Corp and E did not receive an excess distribution or recognize gain treated as an ex-

cess distribution with respect to A Corp. Furthermore, under paragraph (b)(2)(ii) of this section, E does not have to file a Form 8621 under section 1298(f) and these regulations with respect to B Corp because Partnership X timely filed a Form 8621 with respect to B Corp. In addition, under paragraph (c)(2)(ii)(A) of this section, E does not take into account the value of A Corp and B Corp, which E owns through Partnership X, in determining whether E qualifies for the \$25,000 exception. Further, under paragraph (c)(2)(ii)(B) of this section, E does not take into account the value of D Corp in determining whether E qualifies for the \$25,000 exception. Therefore, even though E is the United States person that is at the lowest tier in the chain of ownership with respect to C Corp and D Corp, E does not have to file a Form 8621 with respect to C Corp or D Corp because E qualifies for the \$25,000 exception set forth in paragraph (c)(2)(i)(A)(I) of this section.

Example 4. Indirect shareholder's requirement to file. (i) *Facts.* The facts are the same as in *Example 3* of this paragraph (g), except that the value of E's interest in C Corp is \$30,000 and the value of E's proportionate share of C Corp's interest in D Corp is \$3,000.

(ii) *Results.* The results are the same as in *Example 3* of this paragraph (g) with respect to E having no requirement to file a Form 8621 under section 1298(f) and these regulations with respect to A Corp and B Corp. However, under the facts in this *Example 4*, E does not qualify for the \$25,000 exception under paragraph (c)(2)(i)(A)(I) of this section with respect to C Corp because the value of E's interest in C Corp is \$30,000. Accordingly, E must file a Form 8621 under section 1298(f) and these regulations with respect to C Corp. However, E does qualify for the \$5,000 exception under paragraph (c)(2)(i)(A)(2) of this section with respect to D Corp, and thus does not have to file a Form 8621 with respect to D Corp.

Example 5. Application of the domestic partnership exception. (i) *Facts.* Tax Exempt Entity A and Tax Exempt Entity B are both organizations exempt under section 501(a) because they are described in section 501(c). Tax Exempt Entity A and Tax Exempt Entity B own all the interests in Partnership X, a domestic partnership, which, in turn, owns an interest in Partnership Y, also a domestic partnership. The remaining interests in Partnership Y are owned by F Corp, a foreign corporation owned solely by individuals that are not residents or citizens of the United States. Partnership Y owns an interest in A Corp, which is a PFIC. Any income derived with respect to A Corp would not be taxable to Tax Exempt Entity A or Tax Exempt Entity B under subchapter F of Subtitle A of the Code. Tax Exempt Entity A, Tax Exempt Entity B, Partnership X, and Partnership Y all are calendar year taxpayers.

(ii) *Results.* Under paragraph (c)(1) of this section, Tax Exempt Entity A and Tax Exempt Entity B do not have to file Form 8621 under section 1298(f) and these regulations with respect to A Corp because neither entity would be subject to tax under subchapter F of Subtitle A of the Code with respect to income derived from A Corp. In addition, under paragraph (c)(6) of this section, neither Partnership X nor Partnership Y is required to file Form 8621 under section 1298(f) and these regulations with respect to A Corp because all of the direct and indirect interests in Partnership X and Partnership Y are owned by persons described in paragraph (c)(1) of this section or persons that are not a shareholder of A Corp as defined by § 1.1291-1(b)(7).

(h) *Applicability dates.* (1) Except as provided in paragraph (h)(2) of this section, this section applies to taxable years of shareholders ending on or after December 31, 2013.

(2) Paragraph (c)(9) of this section applies to taxable years of shareholders ending before December 31, 2013.

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§ 1.1298-3 Deemed sale or deemed dividend election by a U.S. person that is a shareholder of a former PFIC.

(a) *In general.* A shareholder (as defined in § 1.1291-9(j)(3)) of a foreign corporation that is a former PFIC, (as defined in § 1.1291-9(j)(2)(iv)) with respect to such shareholder, shall be treated for tax purposes as holding stock in a PFIC and therefore continues to be subject to taxation under section 1291 unless the shareholder makes a purging election under section 1298(b)(1). A purging election under section 1298(b)(1) is made under rules similar to the rules of section 1291(d)(2). Section 1291(d)(2) allows a shareholder to purge the continuing PFIC taint by making either a deemed sale election or a deemed dividend election.

(b) *Application of deemed sale election rules—(1) Eligibility to make the deemed sale election.* A shareholder of a foreign corporation that is a former PFIC with respect to such shareholder may make a deemed sale election under section 1298(b)(1) by applying the rules of this paragraph (b).

(2) *Effect of deemed sale election.* A shareholder making the deemed sale election with respect to a former PFIC shall be treated as having sold all its

stock in the former PFIC for its fair market value on the termination date, as defined in paragraph (d) of this section. A deemed sale is treated as a disposition subject to taxation under section 1291. Thus, gain from the deemed sale is taxed under section 1291 as an excess distribution received on the termination date. In the case of an election made by an indirect shareholder, the amount of gain to be recognized and taxed as an excess distribution is the amount of gain that the direct owner of the stock of the PFIC would have realized on an actual sale or disposition of the stock of the PFIC indirectly owned by the shareholder. Any loss realized on the deemed sale is not recognized. After the deemed sale election, the shareholder's stock with respect to which the election was made under this paragraph (b) shall not be treated as stock in a PFIC and the shareholder shall not be subject to taxation under section 1291 with respect to such stock unless the foreign corporation thereafter qualifies as a PFIC under section 1297(a).

(3) *Time for making the deemed sale election.* Except as provided in paragraph (e) of this section, the shareholder shall make the deemed sale election under this paragraph (b) and section 1298(b)(1) in the shareholder's original or amended return for the taxable year that includes the termination date (election year). If the deemed sale election is made in an amended return, the return must be filed by a date that is within three years of the due date, as extended under section 6081, of the original return for the election year.

(4) *Manner of making the deemed sale election.* A shareholder makes the deemed sale election under this paragraph (b) by filing Form 8621 ("Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund") with the return of the shareholder for the election year, reporting the gain as an excess distribution pursuant to section 1291(a) as if such deemed sale occurred under section 1291(d)(2), and paying the tax and interest due on the excess distribution. A shareholder that makes the deemed sale election after the due date of the return (determined without regard to extensions) for the election year must