DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9806]

RIN 1545–BK66

Definitions and Reporting Requirements for Shareholders of Passive Foreign Investment Companies

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide guidance on determining ownership of a passive foreign investment company (PFIC) and on certain annual reporting requirements for shareholders of PFICs to file Form 8621, ''Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.'' In addition, the final regulations provide guidance on an exception to the requirement for certain shareholders of foreign corporations to file Form 5471, ''Information Return of U.S. Persons with Respect to Certain Foreign Corporations.'' The regulations finalize proposed regulations and withdraw temporary regulations published on December 31, 2013. The final regulations affect United States persons that own interests in PFICs, and certain United States shareholders of foreign corporations.

DATES: *Effective Date:* These regulations are effective on December 28, 2016.

Applicability Dates: For dates of applicability, see §§ 1.1291–1(j)(3), 1.1291–9(k)(3), 1.1298–1(h), 1.6038–2(m), and 1.6046–1(l)(3).

FOR FURTHER INFORMATION CONTACT: Jeffery G. Mitchell at (202) 317–6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 31, 2013, the Treasury Department and the IRS published final and temporary regulations (2013 temporary regulations) under sections 1291, 1298, 6038, and 6046 (T.D. 9650) in the **Federal Register** (78 FR 79602, as corrected at 79 FR 26836). On the same date, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–140974–11) in the **Federal Register** (78 FR 79650, as corrected at 79 FR 27230) cross-referencing the 2013 temporary regulations (2013 proposed regulations). No public hearing was requested or held. Written comments were received, and are available at *www.regulations.gov* or upon request.

On April 28, 2014, the Treasury Department and the IRS issued Notice 2014–28 (2014–18 I.R.B. 990), which announced that the regulations under section 1291 would provide that a United States person that owns stock of a PFIC through a tax-exempt organization or account is not treated as a shareholder of the PFIC with respect to the stock. In addition, on September 29, 2014, the Treasury Department and the IRS issued Notice 2014–51 (2014–40 I.R.B. 594), which announced that the regulations under section 1298 would provide guidance concerning United States persons that own stock in a PFIC that is marked to market under a provision of chapter 1 of the Code other than section 1296.

This Treasury decision adopts the 2013 proposed regulations with the changes described below as final regulations, including implementing the rules described in Notice 2014–28 and Notice 2014–51, and removes the corresponding 2013 temporary regulations.

Summary of Comments and Explanation of Revisions

The final regulations retain the basic approach and structure of the 2013 temporary regulations, with certain revisions. This Summary of Comments and Explanation of Revisions section discusses those revisions as well as comments received in response to the solicitation of comments in the notice of proposed rulemaking accompanying the 2013 temporary regulations. Several comments were received that did not pertain to the rules in the 2013 temporary regulations. These comments are beyond the scope of this rulemaking and are not addressed in this preamble. The Treasury Department and the IRS will consider these comments in connection with any future guidance projects addressing the issues discussed in the comments.

A. Definition of Shareholder and Indirect Shareholder in § 1.1291–1(b)(7) and (8)

1. Revision to Definition of Shareholder Announced in Notice 2014–28

As described in Notice 2014–28, the application of the PFIC rules to a United States person treated as owning stock of a PFIC through a tax-exempt organization or account described in § 1.1298–1(c)(1) would be inconsistent with the tax policies underlying the PFIC rules and the treatment of tax-exempt organizations and accounts. For example, applying the PFIC rules to a United States person that owns stock of a PFIC through an individual retirement account (IRA) described in section 408(a) would be inconsistent with the principle of deferred taxation provided by IRAs. Notice 2014–28 provides that the regulations incorporating the guidance described in the notice will be effective for taxable years of United States persons that own stock of a PFIC through a tax-exempt organization or account ending on or after December 31, 2013.

The final regulations modify the definition of shareholder in § 1.1291–1 as announced in Notice 2014–28. Under new § 1.1291–1(e)(2), a United States person is not treated as a shareholder of a PFIC to the extent the person owns PFIC stock through a tax-exempt organization or account described in § 1.1298–1(c)(1).

2. Indirect Shareholder as a Result of Attribution Through a Domestic Corporation

a. 1992 Proposed Regulations

On April 1, 1992 (57 FR 11024) the Treasury Department and the IRS issued proposed regulations (1992 proposed regulations) that, among other things, included rules for determining when a United States person is treated as indirectly owning stock of a PFIC. Consistent with section 1298(a)(2)(A), § 1.1291–1(b)(8)(ii)(A) of the 1992 proposed regulations provided that a United States person who directly or indirectly owns 50 percent or more in value of the stock of a foreign corporation that is not a PFIC is considered to own a proportionate amount (by value) of any stock (including PFIC stock) owned directly or indirectly by the foreign corporation. Thus, for example, if a United States person owned 100 percent of the shares of FC, a foreign corporation that is not a PFIC but that owns 50 shares of a PFIC, the United States person would be treated as indirectly owning the 50 PFIC shares under § 1.1291–1(b)(8)(ii)(A) of the 1992 proposed regulations.

By contrast, section 1298(a)(1)(B) provides that PFIC stock owned by a domestic corporation (which generally would be treated as a PFIC shareholder itself) is not attributed to any other person, except to the extent provided in regulations. Pursuant to this grant of regulatory authority, § 1.1291–1(b)(8)(ii)(C) of the 1992 proposed regulations provided that, if stock of a section 1291 fund was not treated as owned indirectly by a United States person under the other attribution rules provided in the proposed regulations,

but would be treated as owned by a United States person if the ownership rule of § 1.1291–1(b)(8)(ii)(A) of the 1992 proposed regulations applied to domestic corporations (in addition to foreign corporations), then the stock of the section 1291 fund would be considered as owned by such United States person.

Both § 1.1291–1(b)(8)(ii)(A) and (C) of the 1992 proposed regulations were withdrawn and reissued under the 2013 temporary regulations as § 1.1291–1T(b)(8)(ii)(A) and (C), respectively.

b. Intended Scope of § 1.1291–1T(b)(8)(ii)(C)

The purpose of § 1.1291–1(b)(8)(ii)(C) of the 1992 proposed regulations and § 1.1291–1T(b)(8)(ii)(C), as explained in the preamble to the 1992 proposed regulations, was to attribute stock through a domestic C corporation in certain circumstances if, absent such attribution, the stock of a PFIC would not be treated as owned by any United States person. In particular, because § 1.1291–1T(b)(8)(ii)(A) provides that a United States person who directly or indirectly owns 50 percent or more in value of the stock of a foreign corporation that is not a PFIC is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the foreign corporation, without § 1.1291–1T(b)(8)(ii)(C), a United States person could interpose a domestic C corporation into an ownership structure to avoid shareholder status with respect to stock of a PFIC that the United States person indirectly owned through one or more foreign corporations that were not PFICs. In other words, § 1.1291–1T(b)(8)(ii)(C) provides guidance as to when a United States person is treated as indirectly owning stock of a foreign corporation through a domestic corporation for purposes of § 1.1291–1T(b)(8)(ii)(A).

For example, assume that A, a United States person, owns 49 percent of the stock of FC1, a foreign corporation that is not a PFIC, and separately all the stock of DC, a domestic corporation that is not an S corporation. DC, in turn, owns the remaining 51 percent of the stock of FC1, and FC1 owns 100 shares of stock in a PFIC (which is not a controlled foreign corporation within the meaning of section 957(a)). DC is an indirect shareholder with respect to 51 percent of the PFIC stock held by FC1 under § 1.1291–1T(b)(8)(ii)(A). Absent the application of § 1.1291–1T(b)(8)(ii)(C), because A directly or indirectly owns less than 50 percent of the value of the stock of FC1 and thus § 1.1291–1T(b)(8)(ii)(A) does not apply, A would not be treated as an indirect shareholder with respect to any of the PFIC stock directly owned by FC1 when, from an economic perspective, A indirectly owns all the PFIC stock held by FC1. Therefore, without a rule treating A as owning DC's stock in FC1, the remaining 49 percent of the PFIC stock held by FC1 would not be treated as owned by any United States person.

On the other hand, the literal language of § 1.1291–1T(b)(8)(ii)(C) could have been interpreted to create overlapping ownership by two or more United States persons in the same stock of a section 1291 fund. Thus, in the foregoing example, A may have been considered as owning 100 percent of the stock of FC1, and therefore as indirectly owning all 100 shares of the PFIC stock held by FC1, even though 51 of those shares are considered indirectly owned by DC, a United States person. This outcome is inconsistent with the intended purpose of the rule to attribute stock through a domestic C corporation in certain circumstances if, absent such attribution, the stock of a PFIC would not be treated as owned by any United States person.

c. Revisions to 2013 Temporary Regulations

To address this concern, the final regulations include a non-duplication rule. Specifically, the final regulations provide under § 1.1291–1(b)(8)(ii)(C)(*1*) that, solely for purposes of determining whether a person owns 50 percent or more in value of the stock of a foreign corporation that is not a PFIC under § 1.1291–1(b)(8)(ii)(A), a person who directly or indirectly owns 50 percent or more in value of the stock of a domestic corporation is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the domestic corporation. However, the non-duplication rule in § 1.1291–1(b)(8)(ii)(C)(*2*) states that a United States person will not be treated, as a result of applying § 1.1291–1(b)(8)(ii)(C)(*1*), as owning (other than for purposes of determining whether a person satisfies the ownership threshold of § 1.1291–1(b)(8)(ii)(A)) stock of a PFIC that is directly owned or considered owned indirectly under § 1.1291–1(b)(8) by another United States person (determined without regard to § 1.1291–1(b)(8)(ii)(C)(*1*)).

Applying the non-duplication rule to the example above, to the extent that the 51 shares of PFIC stock are indirectly owned by DC (a United States person) under § 1.1291–1(b)(8)(ii)(A), those shares are not also treated as indirectly owned by A (other than for purposes of determining whether A satisfies the ownership threshold of § 1.1291–1(b)(8)(ii)(A)). Only the remaining 49 shares of PFIC stock are considered to be indirectly owned by A.

d. Additional Revisions to 2013 Temporary Regulations

Lastly, the final regulations make two additional clarifications with respect to this rule. First, the final regulations clarify, under § 1.1291–1(b)(8)(ii)(C)(*3*), that the ownership rule of § 1.1291–1(b)(8)(ii)(C)(*1*) does not apply to stock owned directly or indirectly by an S corporation; rather, the indirect ownership rule under § 1.1291–1(b)(8)(iii)(B) applies in those instances. Second, the final regulations clarify that the attribution rule in § 1.1291–1(b)(8)(ii)(C) applies to all PFICs and not only section 1291 funds, in order to ensure that United States persons who are treated as indirect shareholders of PFICs are permitted to make qualified electing fund elections under section 1295.

B. Exceptions to Section 1298(f) Reporting

A number of comments requested that the final regulations expand the exceptions to section 1298(f) reporting provided in the 2013 temporary regulations or add new exceptions.

1. Exception for PFIC Stock That Is Marked To Market Under a Non-Section 1296 MTM Provision Announced in Notice 2014–51

Two comments requested an exception to section 1298(f) reporting for PFIC stock that is marked to market under a provision of chapter 1 of the Code other than section 1296 (a non-section 1296 MTM provision), such as section 475(f). In response to these comments, the Treasury Department and the IRS issued Notice 2014–51, which announced that the regulations under section 1298 would be amended to provide that United States persons that own stock in a PFIC that is marked to market under a non-section 1296 MTM regime generally are not subject to section 1298(f) reporting. In addition, the notice states that the regulations would provide that a shareholder's PFIC stock that is marked to market under a non-section 1296 MTM provision is not taken into account in determining whether the shareholder qualifies for the exceptions from reporting set forth in § 1.1298–1T(c)(2)(i)(A)(*1*) or (c)(2)(iii), which generally exempt certain shareholders from certain section 1298(f) reporting requirements when their aggregate PFIC holdings do not exceed $25,000 (or, $50,000 in the case of a shareholder that files a joint return).

Notice 2014–51 states that the regulations that incorporate the guidance described in the notice would be effective for taxable years of shareholders ending on or after December 31, 2013.

The final regulations, in accordance with Notice 2014–51, add § 1.1298–1(c)(3), which provides that United States persons that own PFIC stock that is marked to market under a non-section 1296 MTM provision are not subject to section 1298(f) reporting unless they are subject to section 1291 under the coordination rule in § 1.1291–1(c)(4)(ii). Generally, under § 1.1291–1(c)(4)(ii), when a United States person's PFIC stock is marked to market under a non-section 1296 MTM provision in a taxable year after the year in which the United States person acquired the stock, the United States person is subject to section 1291 for the first taxable year in which the United States person marks to market the PFIC stock. Thus, the United States person is subject to section 1291 with respect to any unrealized gain in the stock as of the last day of the first taxable year in which the stock is marked to market, as if the person disposed of the stock on that day. *See* § 1.1291–1(c)(4)(ii) and § 1.1296–1(i)(2) and (3).

Also consistent with Notice 2014–51, the final regulations add § 1.1298–1(c)(2)(ii)(C), pursuant to which a United States person's PFIC stock that is marked to market under a non-section 1296 MTM provision is not taken into account in determining whether the person qualifies for the exceptions from section 1298(f) reporting set forth in § 1.1298–1(c)(2)(i)(A)(*1*) or (c)(2)(iii), provided that the rules of § 1.1296–1(i)(2) and (3) do not apply with respect to the PFIC stock pursuant to § 1.1291–1(c)(4)(ii) for the taxable year. See Section B.7 of this preamble for a description of these exceptions.

2. Exception for Certain Domestic Partnerships

A comment requested that the final regulations add a new exception from the section 1298(f) filing requirements for domestic partnerships in which all of the partners are tax-exempt organizations (or other partnerships, all of the partners of which are tax-exempt organizations) that are not subject to the PFIC rules with respect to a PFIC held by the partnership because any income derived with respect to the PFIC would not be taxable to the tax-exempt partners under subchapter F of Subtitle A of the Code. The comment pointed out that a tax-exempt organization is subject to section 1298(f) reporting with respect to PFIC stock under § 1.1298–1(c)(1) only if the income derived by the organization with respect to the PFIC stock would be taxable to the organization under subchapter F of Subtitle A of the Code. However, under the 2013 temporary regulations, a domestic partnership (such as a domestic partnership that exclusively pools the funds of tax-exempt organizations to invest in PFICs) is required to file a Form 8621 with respect to PFIC stock even when none of its partners are subject to the PFIC rules with respect to the PFIC stock.

Requiring reporting under section 1298(f) by a domestic partnership when none of its direct and indirect owners are subject to the PFIC rules may result in undue compliance costs and burdens. Accordingly, consistent with the exception in § 1.1298–1(c)(1), the final regulations adopt and expand upon this comment and provide a final rule in § 1.1298–1(c)(6) that exempts a domestic partnership from section 1298(f) reporting with respect to an interest in a PFIC for a taxable year when none of its direct or indirect partners are required to file Form 8621 (or successor form) with respect to the PFIC interest under section 1298(f) and these regulations because the partners are not subject to the PFIC rules.

Thus, for example, if all the partners of a domestic partnership are tax-exempt organizations exempt from PFIC taxation under § 1.1291–1(e) with respect to PFIC stock held by the partnership, and accordingly are exempt from reporting pursuant to § 1.1298–1(c)(1), the partnership, in turn, is exempt from filing Form 8621 under section 1298(f) with respect to the PFIC stock held by the partnership. Likewise, if all the partners of a domestic partnership are foreign corporations that are not considered to be shareholders under § 1.1291–1(b)(7) of PFIC stock held by the partnership, and no United States person is an indirect shareholder of the PFIC stock under § 1.1291–1(b)(8), the partnership, in turn, is exempt from filing Form 8621 under section 1298(f) with respect to the PFIC stock held by the partnership.

In contrast, a domestic partnership is not exempt from filing Form 8621 under § 1.1298–1(c)(6) with respect to stock it holds in a section 1291 fund when some or all of its partners are exempt from filing Form 8621 with respect to that stock but otherwise would be subject to tax on distributions on, or dispositions of, that stock. PFIC information reporting by the domestic partnership in these circumstances is appropriate because it furthers PFIC tax compliance and enforcement.

3. Exception for PFIC Stock Held Through Certain Foreign Pension Funds That Are Covered by a U.S. Income Tax Treaty

In general, § 1.1298–1T(b)(3)(ii) exempts a United States person from section 1298(f) reporting with respect to PFIC stock that is owned by the United States person through a foreign trust that is a foreign pension fund operated principally to provide pension or retirement benefits, when, pursuant to the provisions of a U.S. income tax treaty, the income earned by the pension fund may be taxed as the income of the United States person only when, and to the extent, the income is paid to, or for the benefit of, the United States person.

As a threshold matter, this rule applies only when the United States person owns the PFIC through a foreign pension fund that is treated as a foreign trust under section 7701(a)(31)(B). However, the applicable provisions of U.S. income tax treaties apply generally to foreign pension funds, regardless of whether the foreign pension fund is treated as a trust for U.S. income tax purposes.

The Treasury Department and the IRS have concluded that the treaty-based exception in § 1.1298–1T(b)(3)(ii) should be expanded to apply to PFICs held by United States persons through all applicable foreign pension funds (or equivalents, such as exempt pension trusts or pension schemes referred to in certain U.S. income tax treaties), regardless of their entity classification for U.S. income tax purposes. Accordingly, the final regulations revise the treaty-based exception for PFIC stock held by a United States person through certain foreign pension funds under § 1.1298–1T(b)(3)(ii) to eliminate the requirement that the foreign pension fund be treated as a foreign trust under section 7701(a)(31)(B). The final rule, which is renumbered § 1.1298–1(c)(4), clarifies that a foreign pension fund (or equivalent) covered by this exception may be any type of arrangement, including but not limited to one of the arrangements listed in § 1.1298–1(c)(4). The final rule also applies in the case of an income tax treaty that provides the relevant benefit by election (or other procedure), such as under paragraph 7 of Article 18 of the U.S.-Canada income tax treaty, to the extent that the election is in effect (or other procedure properly satisfied).

4. Exception for Dual Resident Taxpayers

A comment requested that an exception from the section 1298(f) filing

requirements be added for dual resident taxpayers who are treated as residents of another country (treaty country) pursuant to an income tax treaty between the United States and the treaty country. In general, a ''dual resident taxpayer'' is an individual who is considered a resident of the United States under the Code, and is also considered a resident of a treaty country under the treaty country's internal laws. § 301.7701(b)–7(a)(1). Certain U.S. income tax treaties contain provisions that resolve the conflicting claims of residence by both countries (tie-breaker rules), pursuant to which dual resident taxpayers are treated as residents of only one country for purposes of income taxation. A dual resident taxpayer may claim the benefit of treatment as a resident of a treaty country for U.S. income tax purposes under a tie-breaker rule of an applicable treaty provision by timely filing Form 8833, ''Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b),'' with an appropriate income tax return, such as Form 1040NR, ''U.S. Nonresident Alien Income Tax Return.'' § 301.7701(b)–7(b) and (c). A dual resident taxpayer who properly claims this benefit is taxed as a nonresident alien (as defined in section 7701(b)(1)(B)) for U.S. income tax purposes.

Nonresident aliens are not subject to tax under the PFIC provisions (sections 1291 through 1298) because the PFIC rules apply only to ''United States persons,'' and nonresident aliens are not United States persons within the meaning of section 7701(a)(30). However, dual resident taxpayers treated as residents of a treaty country for U.S. income tax purposes generally are treated as United States residents under the Code for purposes other than the computation of their income tax liability. § 301.7701(b)–7(a)(3). Accordingly, dual resident taxpayers who are treated as residents of a treaty country under a tie-breaker rule and who own PFICs are subject to the section 1298(f) reporting rules set forth in the 2013 temporary regulations even though they are not subject to tax under the PFIC provisions.

The requirement to file Form 8621 under section 1298(f) increases taxpayer awareness of, and compliance with, the PFIC rules. However, because dual resident taxpayers treated as nonresident aliens for purposes of computing their U.S. tax liability are not subject to tax under the PFIC rules, section 1298(f) reporting by these dual resident taxpayers is not essential to the enforcement of the PFIC provisions. Thus, the Treasury Department and the IRS have determined that it is appropriate to provide an exception from the section 1298(f) reporting rules for dual resident taxpayers who are treated as residents of a treaty country, and, accordingly, not subject to tax under the PFIC provisions.

Accordingly, the final regulations add § 1.1298–1(c)(5), which sets forth an exception from section 1298(f) reporting for a dual resident taxpayer for a taxable year, or the portion of a taxable year, during which the dual resident taxpayer determines any U.S. income tax liability as a nonresident alien under § 301.7701(b)–7, and complies with the filing requirements of § 301.7701(b)–7(b) and (c) and, if applicable, § 1.6012–1(b)(2)(ii)(*b*) (applicable when the dual resident taxpayer is treated as a resident of the treaty country on the last day of the taxable year), or § 1.6012–1(b)(2)(ii)(*a*) (applicable when the dual resident taxpayer is treated as a resident of the United States on the last day of the taxable year). This new section 1298(f) reporting exception is consistent with § 1.6038D–2(e), which generally exempts a dual resident taxpayer who is taxed as a nonresident alien from section 6038D reporting for a taxable year, or the portion of a taxable year, during which the taxpayer is treated as a nonresident alien and properly files Form 8833.

5. Exception for Certain PFIC Stock Held for a Period of 30 Days or Less

Under the 2013 temporary regulations, a shareholder who owns stock in a section 1291 fund for only a short period of time during a year, and does not recognize an excess distribution (or gain treated as an excess distribution) with respect to the section 1291 fund during the year may still have a filing obligation under section 1298(f). Assume, for example, that during a shareholder's taxable year, its section 1291 fund (upper-tier PFIC) acquires all of the stock of another section 1291 fund (lower-tier PFIC), which is liquidated into the upper-tier PFIC a few days after it is acquired. The lower-tier PFIC does not make any distributions to the upper-tier PFIC before the liquidation, and the upper-tier PFIC does not recognize any gain upon the liquidation of the lower-tier PFIC. On the last day of its taxable year, the shareholder owns PFIC stock with a value of more than $25,000, and thus the exception in § 1.1298–1T(c)(2) is not applicable. (See Section B.7 of this preamble for an explanation of the reporting exception in § 1.1298–1T(c)(2).) Accordingly, under the 2013 temporary regulations, the shareholder is required to report its ownership in the lower-tier PFIC, even though it only owned the PFIC for a few days during the year and did not recognize any income with respect to the PFIC.

The Treasury Department and the IRS have concluded that compliance with, and enforcement of, the PFIC regime would not be adversely impacted by allowing a reporting exception for transitory ownership of section 1291 funds when there is no taxation under section 1291 with respect to the short period of ownership. Thus, the final regulations provide an exception for section 1298(f) reporting for certain shareholders with respect to PFICs that were owned for a short period of time during which no PFIC taxation was imposed on the shareholders. Specifically, under § 1.1298–1(c)(7), a shareholder is not required to file a Form 8621 under section 1298(f) with respect to stock of a section 1291 fund that it acquired either during its taxable year or the immediately preceding year, when the shareholder (i) does not own any stock of the section 1291 fund for more than 30 days 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 (ii) did not receive an excess distribution (including gain treated as an excess distribution) with respect to the section 1291 fund.

6. Exception for Certain Bona Fide Residents of U.S. Territories

A bona fide resident (within the meaning of section 937(a)) of a possession of the United States (U.S. territories) (namely, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the United States Virgin Islands) may include an individual who is also a United States person, and thus the bona fide resident may be a shareholder of a PFIC.

Under the 2013 temporary regulations, the general section 1298(f) reporting requirements in § 1.1298–1T(b)(1) apply regardless of whether a shareholder is required to file a U.S. income tax return. As a result, under the 2013 temporary regulations, bona fide residents of U.S. territories who were shareholders of PFICs were subject to the section 1298(f) filing requirements set forth in the 2013 temporary regulations even when they were not required to file a U.S. income tax return. As described in greater detail in this Section B.6, the final regulations change this result for bona fide residents of Guam, the Northern Mariana Islands, and the United States Virgin Islands and, as provided in § 1.1298–1(h)(1), the final regulations apply to taxable years

ending on or after the issuance of the 2013 temporary regulations.

Three of the five U.S. territories (Guam, the Northern Mariana Islands, and the United States Virgin Islands) have a mirror code system of taxation, which means that their income tax laws generally are identical to the Code (except for the substitution of the name of the relevant territory for the term ''United States,'' where appropriate). Bona fide residents of U.S. territories that are mirror code jurisdictions have no income tax obligation (or related filing obligation) with the United States provided, generally, that they properly report income and fully pay their income tax liability to the tax administration of their respective U.S. territory. See sections 932 and 935. Thus, for example, a bona fide resident of Guam who is a shareholder of a PFIC would generally not have a U.S. income tax obligation even in a year when the shareholder is treated as receiving an excess distribution (or recognizing gain treated as an excess distribution) with respect to the PFIC.

Bona fide residents of non-mirror code jurisdictions (American Samoa and Puerto Rico) generally exclude territory-source income from U.S. federal gross income under sections 931 and 933, respectively. (American Samoa currently is the only territory to which section 931 applies because it is the only territory that has entered into an implementing agreement under sections 1271(b) and 1277(b) of the Tax Reform Act of 1986.) However, unlike mirror code jurisdictions, these bona fide residents generally are subject to U.S. income taxation, and have a related income tax return filing requirement with the United States, to the extent they have non-territory-source income or income from amounts paid for services performed as an employee of the United States or any agency thereof. See sections 931(a) and (d) and 933. Further, under the 1992 proposed regulations, certain excess distributions (or gains treated as excess distributions) from a PFIC would be exempt from taxation with respect to a shareholder who is a bona fide resident of Puerto Rico if the amounts distributed were derived from sources in Puerto Rico. Section 1.1291–1(f) of the 1992 proposed regulations. Accordingly, for example, if a bona fide resident of Puerto Rico is a shareholder of a PFIC and is treated as receiving an excess distribution (or recognizing gain treated as an excess distribution) with respect to the PFIC that is from sources outside of Puerto Rico, such shareholder would be subject to U.S. income tax under the PFIC provisions with respect to such amounts.

The Treasury Department and the IRS have concluded that relieving section 1298(f) reporting for PFIC stock held by an individual who is a bona fide resident of a U.S. territory that is a mirror code jurisdiction who is not required to file a U.S. income tax return for one or more taxable years would not adversely impact tax enforcement efforts related to PFICs. This is because such individuals are not subject to U.S. income tax in such years, given that they have properly reported income and fully paid their income tax liability to the tax administration of their respective U.S. territory, and it is unlikely such individuals will ever be subject to tax under the PFIC provisions in the years they receive excess distributions (or recognize gain treated as excess distributions). As a result, these final regulations add § 1.1298–1(c)(8) to provide an exception from reporting under section 1298(f) for a taxable year in which the individual is a bona fide resident of Guam, the Northern Mariana Islands, or the United States Virgin Islands and is not required to file a U.S. income tax return.

However, no exception from reporting is provided with respect to bona fide residents of Puerto Rico and American Samoa. Bona fide residents of Puerto Rico and American Samoa who are not required to file U.S. income tax returns in a given year may still be subject to tax under the PFIC provisions if they are shareholders of a PFIC and receive excess distributions (or recognize gain treated as excess distributions) in a later year. Thus, PFIC information reporting by these individuals can reasonably be expected to further PFIC tax compliance and enforcement.

7. $25,000 and $5,000 Exceptions

Under § 1.1298–1T(c)(2)(i), a shareholder generally is not required to file Form 8621 with respect to a section 1291 fund when the shareholder is not treated as receiving an excess distribution (or recognizing gain treated as an excess distribution) with respect to the section 1291 fund stock, and, as of the last day of the shareholder's taxable year, either the value of all PFIC stock considered owned by the shareholder is $25,000 (or $50,000 for shareholders that file a joint return) or less, or, if the stock of the section 1291 fund is owned indirectly, the value of the indirectly owned stock is $5,000 or less. Stock in a PFIC that is indirectly owned through another PFIC or United States person that is a shareholder of the PFIC is not taken into account in determining if the $25,000 (or $50,000 for joint returns) threshold is met. § 1.1298–1T(c)(2)(ii).

A comment generally requested that the reporting exception thresholds in § 1.1298–1T(c)(2)(i) be increased for U.S. individuals living abroad. The apparent concern underlying the comment is the commenter's view that such persons often are not aware of the PFIC provisions. The Treasury Department and the IRS have determined that adopting an exception to the reporting requirements on this basis would adversely affect compliance with, and enforcement of, the PFIC provisions, because such individuals remain subject to tax under section 1291 regardless of the value of their PFIC stock, and a benefit of requiring reporting with respect to a section 1291 fund in a year in which a shareholder is not subject to tax under section 1291 is to enhance the shareholder's awareness of the PFIC requirements with respect to the section 1291 fund. The Treasury Department and the IRS proposed the dollar amounts for the reporting exception thresholds in the 2013 temporary regulations in order to balance administrative burdens with compliance and enforcement concerns. No comments were submitted that recommended a specific higher dollar amount or that provided a basis, consistent with the purposes of the PFIC provisions, for increasing the monetary thresholds. Accordingly, the final regulations do not increase the monetary thresholds for these exceptions.

A separate comment requested that the reporting exceptions under § 1.1298–1T(c)(2) be expanded to apply when a United States person recognizes an excess distribution under section 1291 in a taxable year with respect to one or more PFICs, to the extent the PFICs are indirectly held through domestic pass-through entities and the total excess distribution income from the PFICs in the taxable year is less than $1,000, indexed for inflation. The comment explained that many United States persons hold indirect interests in section 1291 funds, particularly through partnerships, that generate only small amounts of excess distribution income, and exempting reporting for these PFIC shareholders would simplify PFIC reporting compliance. However, the section 1291 rules apply when a PFIC shareholder receives (or is treated as receiving) an excess distribution, regardless of the dollar amount of the excess distribution. After consideration of this comment, the Treasury Department and the IRS concluded that the request should not be adopted because of the potential for such a

reporting exception to reduce compliance with the substantive section 1291 rules.

C. Manner of Filing Form 8621

1. Filing Form 8621 When a Shareholder Is Not Otherwise Obligated To File a Return

Section 1.1298–1T(d) generally provides that a United States person required to file Form 8621 under section 1298(f) with respect to a PFIC for a taxable year must attach the form to the person's U.S. income tax return (or information return, if applicable) for the relevant taxable year. The instructions for Form 8621 further provide that a United States person who is required to file Form 8621 for a taxable year in which the person does not file an income tax return (or other return) must send the Form 8621 to the IRS at a mailing addressed designated in the instructions.

These final regulations clarify how a United States person files a Form 8621 (or successor form) when the United States person is not otherwise required to file a U.S. income tax return (or information return, if applicable). Section 1.1298–1(d) of the final regulations states that a United States person that is not otherwise required to file a U.S. income tax return must file the Form 8621 (or successor form) in accordance with the instructions for the form.

2. Protective Filing Procedure for Form 8621

A comment requested that the final regulations allow a ''protective'' Form 8621 to be filed under section 1298(f) with respect to a foreign corporation when a shareholder is unsure of its PFIC status due to factors beyond the control of the shareholder that prevent access to the books and records of the corporation necessary to make a PFIC determination. The purpose of the protective filing is to defer any potential section 1298(f) filing requirements so that the assessment period for the shareholder's entire return under section 6501(c)(8) would not be suspended if the foreign corporation is subsequently determined to have been a PFIC in the year to which the protective filing relates. The comment proposed that if the foreign corporation subsequently is determined to be a PFIC for a taxable year for which the protective filing was made, the shareholder would be subject to PFIC taxation in that year, and thus would be required to file Form 8621 for that year.

The failure to file Form 8621 to properly report PFIC information under section 1298(f) for a taxable year suspends the period of limitation on assessment under section 6501(c)(8)(A) with respect to any tax return, event, or period to which the information relates until three years after the information is reported. However, if the failure to file the information is due to reasonable cause and not willful neglect, the period of limitation on assessment under section 6501(c)(8)(B) is suspended only with respect to items related to such failure. The Treasury Department and the IRS have concluded that the reasonable cause exception under section 6501(c)(8)(B) provides appropriate relief for a failure to file Form 8621. When a taxpayer can establish reasonable cause for a failure to file Form 8621, the assessment period is suspended only with respect to items related to the PFIC that were required to be reported on the Form 8621. Thus, the recommendation to add a protective filing rule to the final regulations is not adopted.

3. Consolidated Filings for Forms 8621

Two comments requested that the final regulations allow a United States person to file a consolidated Form 8621 that would include all of the person's PFICs and relevant information on a supporting schedule attached to the Form 8621. One of the comments explained that foreign investment partnerships commonly hold multiple PFIC investments, and, in such cases, a United States person who is a partner in the foreign partnership is required to file multiple Forms 8621 to report each underlying PFIC. This comment further noted that at least two commonly used commercial tax return preparation products, as of 2012, did not allow for electronic filing of a Form 1040 containing more than five Forms 8621, which is contrary to the IRS's goal of increasing e-filings of tax returns.

The Treasury Department and the IRS have concluded that the expenditures needed to redesign and reprogram the IRS's processing system to gather, compile, and cross-reference information from a consolidated Form 8621 outweigh the marginal administrative burden for United States persons to file a separate Form 8621 with respect to each of their PFICs. Accordingly, the final regulations do not adopt the comment to permit consolidated filings.

D. Form 5471 Filing Obligations

The final regulations adopt the 2013 temporary regulations with respect to the removal of the requirement under sections 6038 and 6046 that certain United States persons file a statement in circumstances where the United States person qualifies for the constructive ownership exception, with certain clarifying changes to the language of the regulations.

Effect on Other Documents

Notice 2014–28, 2014–18 I.R.B. 990, is obsolete as of December 28, 2016.

Notice 2014–51, 2014–40 I.R.B. 594, is obsolete as of December 28, 2016.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that most small entities do not own an interest in a PFIC. Moreover, those small entities that are shareholders of a PFIC generally either make a qualified electing fund election under section 1295 or make a mark to market election under section 1296 and were therefore required to file Form 8621 with respect to the PFIC stock under the rules that preceded the 2013 temporary regulations. Thus, there is a limited class of small entities that are PFIC shareholders that were required to file Forms 8621 under the 2013 temporary regulations and that were not required to do so prior to the issuance of those regulations. The final regulations, as compared to the 2013 temporary regulations, provide additional exceptions that exempt certain PFIC shareholders, some of which could include certain small entities, from filing Form 8621. Accordingly, the collection of information required by these final regulations does not affect a substantial number of small entities.

Further, the collection of information required under these final regulations will not have a significant economic impact on a substantial number of small entities because neither the time nor the costs necessary for shareholders to comply with the collection of information requirements is significant. Therefore, a Regulatory Flexibility

Analysis under the Regulatory Flexibility Act is not required.

Drafting Information

The principal author of these regulations is Stephen M. Peng of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries for §§ 1.1291–1, 1.1291–9, and 1.1298–1, § 1.1298–1, and § 1.6046–1 in numerical order and revising the entry for § 1.6038–2 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 1.1291–1, 1.1291–9, and 1.1298–1 also issued under 26 U.S.C. 1298(a) and (g).

* * * * *

Section 1.1298–1 also issued under 26 U.S.C. 1298(f).

* * * * *

Section 1.6038–2 also issued under 26 U.S.C. 6038(d).

* * * * *

Section 1.6046–1 also issued 26 U.S.C. 6046(b).

* * * * *

■ **Par. 2.** Section 1.1291–0 is amended by:

■ 1. Revising the heading and entries for § 1.1291–1.

■ 2. Revising the entry for § 1.1291–9(k).

The revisions read as follows:

§ 1.1291–0 Treatment of shareholders of certain passive foreign investment companies; table of contents.

* * * * *

§ 1.1291–1 Taxation of U.S. persons that are shareholders of section 1291 funds.

(a) through (b)(2)(i) [Reserved]
(ii) Pedigreed QEF.
(b)(2)(iii) and (iv) [Reserved]
(v) Section 1291 fund.
(3) through (6) [Reserved]
(7) Shareholder.
(8) Indirect shareholder.
(i) In general.
(ii) Ownership through a corporation.
(A) Ownership through a non-PFIC foreign corporation.
(B) Ownership through a PFIC.
(C) Ownership through a domestic corporation.
(iii) Ownership through pass-through entities.
(A) Partnerships.
(B) S Corporations.
(C) Estates and nongrantor trusts.
(D) Grantor trusts.
(iv) Examples.
(c) Coordination with other PFIC rules.
(1) and (2) [Reserved]
(3) Coordination with section 1296: Distributions and dispositions.
(4) Coordination with mark to market rules under chapter 1 of the Internal Revenue Code other than section 1296.
(i) In general.
(ii) Coordination rule.
(d) [Reserved]
(e) Exempt organization as shareholder.
(1) In general.
(2) Ownership through certain tax-exempt organizations and accounts.
(f) through (i) [Reserved]
(j) Applicability dates.

§ 1.1291–9 Deemed dividend election.

* * * * *

(k) Effective/applicability dates.

* * * * *

§ 1.1291–0T [Removed]

■ **Par. 3.** Section 1.1291–0T is removed.

■ **Par. 4.** Section 1.1291–1 is amended by:

■ 1. Revising the section heading.

■ 2. Adding paragraphs (b)(2)(ii) and (v), (b)(7), and (b)(8).

■ 3. Revising paragraphs (e)(2) and (j).

The revisions and additions read as follows:

§ 1.1291–1 Taxation of U.S. persons that are shareholders of section 1291 funds.

* * * * *

(b) * * *

(2) * * *

(ii) *Pedigreed QEF.* A PFIC is a *pedigreed QEF* with respect to a shareholder if the PFIC has been a QEF with respect to the shareholder for all taxable years during which the corporation was a PFIC that are included wholly or partly in the shareholder's holding period of the PFIC stock.

* * * * *

(v) *Section 1291 fund.* A PFIC is a *section 1291 fund* with respect to a shareholder unless the PFIC is a pedigreed QEF with respect to the shareholder or a section 1296 election is in effect with respect to the shareholder.

* * * * *

(7) *Shareholder.* A *shareholder* is a United States person that directly owns stock of a PFIC (a direct shareholder), or that is an indirect shareholder (as defined in section 1298(a) and paragraph (b)(8) of this section), except as provided in paragraph (e) of this section. For purposes of sections 1291 and 1298, a domestic partnership or S corporation (as defined in section 1361(a)(1)) is not treated as a shareholder of a PFIC except for purposes of any information reporting requirements, including the requirement to file an annual report under section 1298(f). In addition, to the extent that a person is treated under sections 671 through 678 as the owner of a portion of a domestic trust, the trust is not treated as a shareholder of a PFIC with respect to PFIC stock held by that portion of the trust, except for purposes of the information reporting requirements of § 1.1298–1(b)(3)(i) (imposing an information reporting requirement on domestic liquidating trusts and fixed investment trusts).

(8) *Indirect shareholder*—(i) *In general.* An *indirect shareholder* of a PFIC is a United States person that indirectly owns stock of a PFIC. A person indirectly owns stock when it is treated as owning stock of a corporation owned by another person, including another United States person, under this paragraph (b)(8). In applying this paragraph (b)(8), the determination of a person's indirect ownership is made on the basis of all the facts and circumstances in each case; the substance rather than the form of ownership is controlling, taking into account the purposes of sections 1291 through 1298.

(ii) *Ownership through a corporation*—(A) *Ownership through a non-PFIC foreign corporation.* A person that directly or indirectly owns 50 percent or more in value of the stock of a foreign corporation that is not a PFIC is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the foreign corporation.

(B) *Ownership through a PFIC.* A person that directly or indirectly owns stock of a PFIC is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the PFIC. Section 1297(d) does not apply in determining whether a corporation is a PFIC for purposes of this paragraph (b)(8)(ii)(B).

(C) *Ownership through a domestic corporation*—(*1*) *In general.* Solely for purposes of determining whether a person satisfies the ownership threshold described in paragraph (b)(8)(ii)(A) of this section, a person that directly or indirectly owns 50 percent or more in value of the stock of a domestic corporation is considered to own a proportionate amount (by value) of any stock owned directly or indirectly by the domestic corporation.

(*2*) *Non-duplication.* Paragraph (b)(8)(ii)(C)(*1*) of this section does not apply to treat a United States person as owning (other than for purposes of

applying the ownership threshold in paragraph (b)(8)(ii)(A) of this section) stock of a PFIC that is directly owned or considered owned indirectly within the meaning of this paragraph (b)(8) by another United States person (determined without regard to paragraph (b)(8)(ii)(C)(*1*)). See *Example 1* of paragraph (b)(8)(iv) of this section.

(*3*) *S corporations.* The 50 percent limitation in paragraph (b)(8)(ii)(C)(*1*) of this section does not apply with respect to stock owned directly or indirectly by an S corporation. See paragraph (b)(8)(iii)(B) of this section for rules regarding stock owned directly or indirectly by an S corporation.

(iii) *Ownership through pass-through entities*—(A) *Partnerships.* If a foreign or domestic partnership directly or indirectly owns stock, the partners of the partnership are considered to own such stock proportionately in accordance with their ownership interests in the partnership.

(B) *S Corporations.* If an S corporation directly or indirectly owns stock, each S corporation shareholder is considered to own such stock proportionately in accordance with the shareholder's ownership interest in the S corporation.

(C) *Estates and nongrantor trusts.* If a foreign or domestic estate or nongrantor trust (other than an employees' trust described in section 401(a) that is exempt from tax under section 501(a)) directly or indirectly owns stock, each beneficiary of the estate or trust is considered to own a proportionate amount of such stock. For purposes of this paragraph (b)(8)(iii)(C), a nongrantor trust is any trust or portion of a trust that is not treated as owned by one or more persons under sections 671 through 679.

(D) *Grantor trusts.* If a foreign or domestic trust directly or indirectly owns stock, a person that is treated under sections 671 through 679 as the owner of any portion of the trust that holds an interest in the stock is considered to own the interest in the stock held by that portion of the trust.

(iv) *Examples.* The rules of this paragraph (b)(8) are illustrated by the following examples:

Example 1. A is a United States person who owns 49 percent of the stock of FC1, a foreign corporation that is not a PFIC, and separately all the stock of DC, a domestic corporation that is not an S corporation. DC, in turn, owns the remaining 51 percent of the stock of FC1, and FC1 owns 100 shares of stock in a PFIC that is not a controlled foreign corporation (CFC) within the meaning of section 957(a). DC is an indirect shareholder with respect to 51 percent of the PFIC stock held by FC1 under paragraph (b)(8)(ii)(A) of this section. In determining whether A owns 50 percent or more of the value of FC1 for purposes of applying paragraph (b)(8)(ii)(A) of this section, A is considered under paragraph (b)(8)(ii)(C)(*1*) of this section as indirectly owning all the stock of FC1 that DC directly owns. However, because 51 shares of the PFIC stock held by FC1 are indirectly owned by DC under paragraph (b)(8)(ii)(A) of this section, pursuant to the limitation imposed by paragraph (b)(8)(ii)(C)(*2*) of this section, only the remaining 49 shares of the PFIC stock are considered as indirectly owned by A under paragraph (b)(8) of this section.

* * * * *

(e) * * *

(2) *Ownership through certain tax-exempt organizations and accounts.* To the extent a United States person owns stock of a PFIC through an organization or account described in § 1.1298–1(c)(1), that person is not treated as a shareholder with respect to the PFIC stock.

* * * * *

(j) *Applicability dates.* (1) Paragraphs (c)(3) and (4) of this section apply for taxable years beginning on or after May 3, 2004.

(2) Paragraph (e)(1) of this section is applicable on and after April 1, 1992.

(3) Paragraphs (b)(2)(ii), (b)(2)(v), (b)(7), (b)(8), and (e)(2) of this section apply to taxable years of shareholders ending on or after December 31, 2013.

§ 1.1291–1T [Removed]

■ **Par. 5.** Section 1.1291–1T is removed.

■ **Par. 6.** Section 1.1291–9 is amended by revising paragraphs (j)(3) and (k)(3) to read as follows:

§ 1.1291–9 Deemed dividend election.

* * * * *

(j) * * *

(3) A shareholder is a United States person that is a shareholder as defined in § 1.1291–1(b)(7) or an indirect shareholder as defined in § 1.1291–1(b)(8), except as provided in § 1.1291–1(e).

(k) * * *

(3) Paragraph (j)(3) of this section applies to taxable years of shareholders ending on or after December 31, 2013.

§ 1.1291–9T [Removed]

■ **Par. 7.** Section 1.1291–9T is removed.

■ **Par. 8.** Section 1.1298–0 is amended by:

■ 1. Revising the section heading and introductory text.

■ 2. Adding a heading and entries for § 1.1298–1.

The revisions and additions read as follows:

§ 1.1298–0 Passive foreign investment company—table of contents.

This section contains a listing of the paragraph headings for §§ 1.1298–1 and 1.1298–3.

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

(a) Overview.

(b) Requirement to file.

(1) General rule.

(2) Additional requirement to file for certain indirect shareholders.

(i) General rule.

(ii) Exception to indirect shareholder reporting for certain QEF inclusions and MTM inclusions.

(3) Special rules for estates and trusts.

(i) Domestic liquidating trusts and fixed investment trusts.

(ii) Beneficiaries of foreign estates and trusts.

(c) Exceptions.

(1) Exception if shareholder is a tax-exempt entity.

(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.

(ii) Determination of the $25,000 threshold in the case of indirect ownership.

(iii) Application of the $25,000 exception to shareholders who file a joint return.

(iv) Reliance on periodic account statements.

(3) Exception for PFIC stock marked to market under a provision other than section 1296.

(4) Exception for PFIC stock held through certain foreign pension funds.

(5) Exception for certain shareholders who are dual resident taxpayers.

(i) General rule.

(ii) Dual resident taxpayer filing as nonresident alien at end of taxable year.

(iii) Dual resident taxpayer filing as resident alien at end of taxable year.

(6) Exception for certain domestic partnerships.

(7) Exception for certain short-term ownership of PFIC stock.

(8) Exception for certain bona fide residents of U.S. territories.

(9) Exception for taxable years ending before December 31, 2013.

(d) Time and manner for filing.

(e) Separate annual report for each PFIC.

(1) General rule.

(2) Special rule for shareholders who file a joint return.

(f) Coordination rule.

(g) Examples.

(h) Applicability date.

* * * * *

§ 1.1298–0T [Removed]

■ **Par. 9.** Section 1.1298–0T is removed.

■ **Par. 10.** Section 1.1298–1 is added to read as follows:

§ 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 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)(*1*) 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 exception described in paragraph (c)(2)(i)(A)(*1*) 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 respect 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 excess 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)(*1*) 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)(*1*) 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.

§ 1.1298–1T [Removed]

■ **Par. 11.** Section 1.1298–1T is removed.

■ **Par. 12.** Section 1.6038–2 is amended by revising paragraphs (j)(3) and (m) to read as follows:

§ 1.6038–2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

* * * * *

(j) * * *

(3) *Statement required.* Any United States person required to furnish information under this section with his return who does not do so by reason of the provisions of paragraph (j)(1) of this section shall file a statement with his income tax return indicating that such requirement has been (or will be) satisfied and identifying the return with which the information was or will be filed and the place of filing.

* * * * *

(m) *Applicability dates.* Except as otherwise provided, this section applies with respect to information for annual accounting periods beginning on or after June 21, 2006. Paragraphs (k)(1) and (5) *Examples 3* and *4* of this section apply June 21, 2006. Paragraph (d) of this section applies to taxable years ending after April 9, 2008. Paragraph (j)(3) of this section applies to returns filed on or after December 31, 2013.

§ 1.6038–2T [Removed]

■ **Par. 13.** Section 1.6038–2T is removed.

■ **Par. 14.** Section 1.6046–1 is amended by revising paragraph (e)(5) and adding paragraph (l)(3) to read as follows:

§ 1.6046–1 Returns as to organizations or reorganizations of foreign corporations and as to acquisitions of their stock.

* * * * *

(e) * * *

(5) *Persons excepted from furnishing items of information.* Any person required to furnish any item of information under paragraph (b) or (c) of this section with respect to a foreign corporation may, if such item of information is furnished by another person having an equal or greater stock interest (measured in terms of either the total combined voting power of all classes of stock of the foreign corporation entitled to vote or the total value of the stock of the foreign corporation) in such foreign corporation, satisfy such requirement by filing a statement with his return on Form 5471 indicating that such requirement has been satisfied and identifying the return in which such item of information was included. This paragraph (e)(5) does not apply to persons excepted from filing a return by reason of the provisions of paragraph (e)(4) of this section.

* * * * *

(l) * * *

(3) Paragraph (e)(5) of this section applies to returns filed on or after December 31, 2013. See paragraph (e)(5) of § 1.6046–1, as contained in 26 CFR part 1 revised as of April 1, 2012, for returns filed before December 31, 2013.

§ 1.6046–1T [Removed]

■ **Par. 15.** Section 1.6046–1T is removed.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: December 13, 2016.

Mark D. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016–30712 Filed 12–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9792]

RIN 1545–BJ48

United States Property Held by Controlled Foreign Corporations in Transactions Involving Partnerships; Rents and Royalties Derived in the Active Conduct of a Trade or Business; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains corrections to the final regulations (TD 9792) that were published in the **Federal Register** on Thursday, November 3, 2016 (81 FR 76497). The final regulations provide rules regarding the treatment as United States property of property held by a controlled foreign corporation (CFC) in connection with certain transactions involving partnerships.

DATES: This correction is effective December 28, 2016 and is applicable on or after November 3, 2016.

FOR FURTHER INFORMATION CONTACT: Rose E. Jenkins, at (202) 317–6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9792) that are the subject of this correction are