



Suite 1160  
1040 W Georgia St  
Vancouver, BC  
Canada V6E 4H1  
tel 778 327 6540  
fax 778 327 6546

February 15, 2012

Dear Pembrook Shareholder,

Pembrook Mining Corp. ("Pembrook" or the "Company") advises its shareholders who are **U.S. Persons** that the Company has concluded that for U.S. tax purposes, it has been a passive foreign investment company ("PFIC") in each taxable year since its formation. A PFIC is defined in Section 1297 of the Internal Revenue Code of 1986, as amended.

A U.S. Person generally includes a U.S. domestic corporation, a U.S. domestic partnership, a U.S. citizen or resident of the U.S. and certain estates and trusts.

Generally, a U.S. Person who is shareholder of a PFIC should be aware of the tax consequences of (1) receiving a dividend from a PFIC, and; (2) the direct or indirect disposition of PFIC stock. Additional information regarding PFICs is provided in the attachment prepared by PricewaterhouseCoopers LLP and IRS Form 8621 and instructions. This document, including the attachments, are not intended in any way to constitute tax advice and all Pembrook shareholders who are U.S. Persons are strongly encouraged to seek personal income tax advice regarding the income tax implications of investing in PFICs before March 31, 2012.

For Pembrook shareholders who have made, or will be making, a qualified electing fund ("QEF") election, Pembrook has provided information on earnings and profits ("E&P") and long-term capital gains by taxable year on its website: [www.pembrookmining.com](http://www.pembrookmining.com). Additional information may be obtained by contacting the Company directly or emailing [info@pembrookmining.com](mailto:info@pembrookmining.com).

On behalf of **PEMBROOK MINING CORP.**

A handwritten signature in blue ink, appearing to read "April Hashimoto", is written over a light blue horizontal line.

April Hashimoto  
Chief Financial Officer

## **Summary of US PFIC and Foreign Financial Asset Reporting Rules**

TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, WE INFORM YOU THAT THIS DOCUMENT WAS NOT INTENDED OR WRITTEN TO BE USED, AND IT CANNOT BE USED BY ANY TAXPAYER (INCLUDING, BUT NOT LIMITED TO PEMBROOK MINING CORP.), FOR THE PURPOSE OF AVOIDING US FEDERAL, STATE, OR LOCAL TAX PENALTIES. THIS INCLUDES PENALTIES THAT MAY APPLY IF THE MATTER THAT IS THE SUBJECT OF THIS DOCUMENT IS FOUND TO LACK ECONOMIC SUBSTANCE OR FAILS TO SATISFY ANY OTHER SIMILAR RULE OF LAW. THIS DOCUMENT IS BEING ISSUED IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY PEMBROOK MINING CORP TO PERSONS OTHER THAN PEMBROOK MINING CORP FOR THE PFIC MATTERS ADDRESSED IN IT. EACH TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

As a result of new U.S. reporting requirements introduced on March 18, 2010 under the Hiring Incentives to Restore Employment ("HIRE") Act of 2010,<sup>1</sup> there may be a heightened awareness by U.S. investors of the U.S. tax treatment of passive foreign investment companies ("PFICs"). These rules may apply to Canadian mining companies with U.S. shareholders, especially those companies that are still in the exploration stage that have not yet realized active mining revenue.

### **U.S. Shareholders Subject to the PFIC Rules**

A shareholder that is considered to be a "US person" will be subject to the PFIC rules if the foreign corporation is considered to be a PFIC. A U.S. person generally includes a U.S. domestic corporation, a U.S. domestic partnership, a U.S. citizen or resident of the United States and certain estates and trusts.

### **PFIC Overview**

The passive foreign investment company ("PFIC") rules were originally enacted in 1986 to prevent U.S. persons from using foreign mutual funds or other non-U.S. corporations to accumulate offshore "passive income" without current taxation to U.S. shareholders. The PFIC rules discourage such investments by subjecting U.S. shareholders to a punitive tax regime on the disposition of the stock of the non-U.S. corporation or on the receipt of certain distributions from the PFIC. Further, there are various prohibitive restrictions on owning PFIC stock. For instance, shares in a PFIC generally may not be rolled over tax-free in a reorganization, unless the acquiror is a PFIC, and a transferee of PFIC stock does not obtain a stepped-up tax basis on death of the U.S. shareholder transferor. Moreover, a U.S. shareholder's pledge of PFIC stock to secure a loan is generally treated as a disposition at fair market value. While these rules are not new, what is new is an annual filing requirement for U.S. shareholders and substantial penalties that may apply to U.S. shareholders for non-compliance.

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<sup>1</sup> Pub.L. 111-147, 124 Stat. 71.

## **What is a PFIC?**

Unlike the U.S. tax rules for controlled foreign corporations (“CFCs”), there is no minimum ownership threshold that must be triggered for a non-U.S. corporation to be considered a PFIC. The U.S. tax rules define a PFIC as a non-U.S. corporation owned direct or indirectly by a U.S. investor where in a taxable year either (i) 75 percent or more of its gross income is “passive income” or (ii) 50 percent or more of its assets are “passive assets” (i.e., assets that produce passive income).

The rule and its focus on gross income may be particularly problematic for exploration companies. This is because if an exploration company has no active income, even nominal amounts of passive income may cause the company to be a PFIC.

Mining companies with substantial temporary cash reserves and other liquid assets may also be caught under the “passive asset” test. For example, an exploration company may become a PFIC if a securities offering generates substantial proceeds (in proportion to the company’s existing assets) and such cash proceeds are not used to acquire assets that produce active income in a relatively timely fashion.

Once a foreign corporation is treated by a U.S. investor as a PFIC, it will continue to be treated as a PFIC for that investor unless, generally speaking, certain purging elections are made.<sup>2</sup>

## **Taxation of U.S. Investors**

Under the PFIC rules, a U.S. shareholder is essentially permitted to defer taxation on income earned within a PFIC. However, on receipt of a distribution from the PFIC, or on the sale of PFIC stock, a U.S. shareholder is required to allocate its gain (or distribution<sup>3</sup>) over its entire holding period, treat the gain (or distribution) as ordinary income, and then pay tax (at the maximum applicable tax rate) and an interest charge on the deferred tax liability that would have been imposed if such gain had been accrued rateably over the U.S. shareholder’s holding period. The interest charge is equal to the short term adjusted federal rate (“AFR”) plus three percent.

## **QEF/ Mark-to-Market Elections**

As an alternative to the “interest charge” regime, there are elections available to a U.S. taxpayer designed to tax PFIC income currently regardless of whether this income has been distributed. The most common election is the Qualifying Electing Fund (“QEF”) election. A “QEF election” requires the U.S. shareholder to be taxed in any year that the corporation is a PFIC on the shareholder’s share of the undistributed ordinary income and net capital gain of the

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<sup>2</sup> U.S. shareholders may purge the continuing PFIC taint under the once-a-PFIC-always-a-PFIC rule in certain cases by filing either a deemed sale election or a deemed dividend election under Internal Revenue Code §1291(d)(2). Note that there are a couple of retroactive QEF elections available for certain PFIC owners; however, such elections generally require a taxpayer to have a reasonable belief at the time the original QEF election was due that the non-US corporation was not a PFIC.

<sup>3</sup> Technically, only such portion of a distribution in excess of 125% of the average distribution received by the PFIC shareholder over the prior three year period would be taken into account for purposes of allocating income over the holding period of the PFIC shareholder.

corporation. In the case of a mining exploration company with no operating income, the QEF election may result in little or no current income inclusion to the electing U.S. shareholder. However, as a precondition for a U.S. shareholder to make a QEF election, the non-U.S. corporation must agree to provide its U.S. shareholders with the amount of their share of ordinary income and net capital gain, determined under U.S. tax principles, in each year that the corporation is a PFIC, and to make its books available for IRS inspection to confirm the calculations on audit.

Alternatively, if the stock of the PFIC is traded on a stock exchange, a U.S. shareholder may make a "mark-to-market" election to be taxed (at ordinary income rates) on the appreciation in the value of the stock in any year that the corporation is a PFIC.

### **Reporting Requirements under the 2010 Hiring Incentives to Restore Employment ("HIRE") Act**

The PFIC rules have traditionally been an area in which there are varying levels of compliance. In the past, the PFIC rules only required U.S. investors to disclose their investment in a PFIC if an "excess" distribution arose or a QEF, "mark-to market," or certain other elections were being made, or had been made in the past. The new U.S. tax rules enacted in the HIRE Act, however, now require U.S. shareholders of a PFIC to annually disclose their investment in the PFIC, regardless of whether there has been an "excess distribution" or whether any election has been made.

The HIRE Act added a requirement that each U.S. shareholder of a PFIC file an annual report containing any information required by the IRS. The HIRE Act did not specifically identify the information that shareholders are required to report and, pursuant to Notice 2010-34, no incremental PFIC annual reporting is required for tax years beginning before March 18, 2010. Notice 2011-55, released in June 2011, has generally suspended these new filing requirements until such time as the U.S. Internal Revenue Service ("IRS") releases a revised IRS Form 8621.

### **Reporting of "Specified Foreign Financial Assets"**

The HIRE Act also introduces new reporting requirements, effective 2011, that require individual taxpayers to disclose any interest in a "specified foreign financial asset" for any year in which the aggregate value of all such assets is greater than the specified reporting threshold (see attached Form 8938 instructions that outlines the various reporting thresholds). This disclosure is separate from and in addition to the Foreign Bank and Financial Asset Reporting ("FBAR") requirements.

A "specified foreign financial asset" generally includes:

- any financial account maintained by a foreign financial institution;
- to the extent held for investment and not held in a financial account, any stock or securities issued by foreign persons, and any financial instrument or contract with an issuer or counterparty that is not a US person; and
- any interest in a foreign entity.

Noncompliance with the reporting provisions related to “specified foreign financial assets” may result in (i) penalties of \$10,000 per taxable year, (ii) a new 40% accuracy related penalty on understatements of income attributable to undisclosed foreign financial assets, and (iii) the application of a new six-year statute of limitations.

Because the new reporting requirements for “specified foreign financial assets” apply to any interest in a foreign entity, the new rules effect U.S. investor’s investments in PFICs and non-PFICs alike. Thus, the failure of a U.S. individual to adequately disclose their investment in their tax return under the new rules may trigger the penalties regardless of whether the investment is treated as a PFIC.

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

OMB No. 1545-1002

Attachment  
 Sequence No. **69**

▶ See separate instructions.

Name of shareholder	Identifying number (see instructions)
Number, street, and room or suite no. (If a P.O. box, see instructions.)	Shareholder tax year: calendar year 20 or other tax year beginning , 20 and ending , 20
City or town, state, and ZIP code or country	
Check type of shareholder filing the return: <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> S Corporation <input type="checkbox"/> Nongrantor Trust <input type="checkbox"/> Estate	
Name of passive foreign investment company (PFIC) or qualified electing fund (QEF)	Employer identification number (if any)
Address (Enter number, street, city or town, and country.)	Tax year of company or fund: calendar year 20 or other tax year beginning , 20 and ending , 20

**Part I Elections (See instructions.)**

- A  **Election To Treat the PFIC as a QEF.** I, a shareholder of a PFIC, elect to treat the PFIC as a QEF. *Complete lines 1a through 2c of Part II.*
- B  **Deemed Sale Election.** I, a shareholder on the first day of a PFIC's first tax year as a QEF, elect to recognize gain on the deemed sale of my interest in the PFIC. *Enter gain or loss on line 10f of Part IV.*
- C  **Deemed Dividend Election.** I, a shareholder on the first day of a PFIC's first tax year as a QEF that is a controlled foreign corporation (CFC), elect to treat an amount equal to my share of the post-1986 earnings and profits of the CFC as an excess distribution. *Enter this amount on line 10e of Part IV.*
- D  **Election To Extend Time For Payment of Tax.** I, a shareholder of a QEF, elect to extend the time for payment of tax on the undistributed earnings and profits of the QEF until this election is terminated. *Complete lines 3a through 4c of Part II to calculate the tax that may be deferred.*  
  
**Note:** *If any portion of line 1a or line 2a of Part II is includible under section 951, you may not make this election. Also, see sections 1294(c) and 1294(f) and the related regulations for events that terminate this election.*
- E  **Election To Recognize Gain on Deemed Sale of PFIC.** I, a shareholder of a former PFIC or a PFIC to which section 1297(d) applies, elect to treat as an excess distribution the gain recognized on the deemed sale of my interest in the PFIC, or, if I qualify, my share of the PFIC's post-1986 earnings and profits deemed distributed, on the last day of its last tax year as a PFIC under section 1297(a). *Enter gain on line 10f of Part IV.*
- F  **Election To Mark-to-Market PFIC Stock.** I, a shareholder of a PFIC, elect to mark-to-market the PFIC stock that is marketable within the meaning of section 1296(e). *Complete Part III.*
- G  **Deemed Dividend Election With Respect to a Section 1297(e) PFIC.** I, a shareholder of a section 1297(e) PFIC, within the meaning of Regulations section 1.1291-9(j)(2)(v), elect to make a deemed dividend election with respect to the Section 1297(e) PFIC. My holding period in the stock of the Section 1297(e) PFIC includes the CFC qualification date, as defined in Regulations section 1.1297-3(d).
- H  **Deemed Dividend Election With Respect to a Former PFIC.** I, a shareholder of a former PFIC, within the meaning of Regulations section 1.1291-9(j)(2)(iv), elect to make a deemed dividend election with respect to the former PFIC. My holding period in the stock of the former PFIC includes the termination date, as defined in Regulations section 1.1298-3(d).

**Part II Income From a Qualified Electing Fund (QEF).** All QEF shareholders complete lines 1a through 2c. If you are making Election D, also complete lines 3a through 4c. (See instructions.)

<b>1a</b> Enter your pro rata share of the ordinary earnings of the QEF . . . . .	<b>1a</b>			
<b>b</b> Enter the portion of line 1a that is included in income under section 951 or that may be excluded under section 1293(g) . . . . .	<b>1b</b>			
<b>c</b> Subtract line 1b from line 1a. Enter this amount on your tax return as ordinary income . . . . .			<b>1c</b>	
<b>2a</b> Enter your pro rata share of the total net capital gain of the QEF . . . . .	<b>2a</b>			
<b>b</b> Enter the portion of line 2a that is included in income under section 951 or that may be excluded under section 1293(g) . . . . .	<b>2b</b>			
<b>c</b> Subtract line 2b from line 2a. This amount is a net long-term capital gain. Enter this amount in Part II of the Schedule D used for your income tax return. (See instructions.) . . . . .			<b>2c</b>	
<b>3a</b> Add lines 1c and 2c . . . . .			<b>3a</b>	
<b>b</b> Enter the total amount of cash and the fair market value of other property distributed or deemed distributed to you during the tax year of the QEF. (See instructions.) . . . . .	<b>3b</b>			
<b>c</b> Enter the portion of line 3a not already included in line 3b that is attributable to shares in the QEF that you disposed of, pledged, or otherwise transferred during the tax year . . . . .	<b>3c</b>			
<b>d</b> Add lines 3b and 3c . . . . .			<b>3d</b>	
<b>e</b> Subtract line 3d from line 3a, and enter the difference (if zero or less, enter amount in brackets) . . . . .			<b>3e</b>	
<b>Important:</b> <i>If line 3e is greater than zero, and no portion of line 1a or 2a is includible in income under section 951, you may make Election D with respect to the amount on line 3e.</i>				
<b>4a</b> Enter the total tax for the tax year (See instructions.) . . . . .	<b>4a</b>			
<b>b</b> Enter the total tax for the tax year determined without regard to the amount entered on line 3e . . . . .	<b>4b</b>			
<b>c</b> Subtract line 4b from line 4a. <b>This is the deferred tax, the time for payment of which is extended by making Election D. See instructions.</b> . . . . .			<b>4c</b>	

**Part III Gain or (Loss) From Mark-to-Market Election (See instructions.)**

<b>5a</b>	Enter the fair market value of your PFIC stock at the end of the tax year . . . . .	<b>5a</b>	
<b>b</b>	Enter your adjusted basis in the stock at the end of the tax year . . . . .	<b>5b</b>	
<b>c</b>	Subtract line 5b from line 5a. If a gain, do not complete lines 6 and 7. Include this amount as ordinary income on your tax return. If a loss, go to line 6 . . . . .	<b>5c</b>	
<b>6</b>	Enter any unreversed inclusions (as defined in section 1296(d)) . . . . .	<b>6</b>	
<b>7</b>	Enter the loss from line 5c, but only to the extent of unreversed inclusions on line 6. Include this amount as an ordinary loss on your tax return . . . . .	<b>7</b>	
<b>8</b>	<b>If you sold or otherwise disposed of any section 1296 stock (see instructions) during the tax year:</b>		
<b>a</b>	Enter the fair market value of the stock on the date of sale or disposition . . . . .	<b>8a</b>	
<b>b</b>	Enter the adjusted basis of the stock on the date of sale or disposition . . . . .	<b>8b</b>	
<b>c</b>	Subtract line 8b from line 8a. If a gain, do not complete line 9. Include this amount as ordinary income on your tax return. If a loss, go to line 9 . . . . .	<b>8c</b>	
<b>9a</b>	Enter any unreversed inclusions (as defined in section 1296(d)) . . . . .	<b>9a</b>	
<b>b</b>	Enter the loss from line 8c, but only to the extent of unreversed inclusions on line 9a. Include this amount as an ordinary loss on your tax return. If the loss on line 8c exceeds unreversed inclusions on line 9a, complete line 9c	<b>9b</b>	
<b>c</b>	Enter the amount by which the loss on line 8c exceeds unreversed inclusions on line 9a. Include this amount on your tax return according to the rules generally applicable for losses provided elsewhere in the Code and regulations . . . . .	<b>9c</b>	

Note. See instructions in case of multiple dispositions.

**Part IV Distributions From and Dispositions of Stock of a Section 1291 Fund (See instructions.)**  
*Complete a separate Part IV for each excess distribution (see instructions).*

<b>10a</b>	Enter your total distributions from the section 1291 fund during the current tax year with respect to the applicable stock. If the holding period of the stock began in the current tax year, see instructions . . . . .	<b>10a</b>	
<b>b</b>	Enter the total distributions (reduced by the portions of such distributions that were excess distributions but not included in income under section 1291(a)(1)(B)) made by the fund with respect to the applicable stock for each of the 3 years preceding the current tax year (or if shorter, the portion of the shareholder's holding period before the current tax year) . . . . .	<b>10b</b>	
<b>c</b>	Divide line 10b by 3. (See instructions if the number of preceding tax years is less than 3.) . . . . .	<b>10c</b>	
<b>d</b>	Multiply line 10c by 125% (1.25) . . . . .	<b>10d</b>	
<b>e</b>	Subtract line 10d from line 10a. This amount, if more than zero, is the excess distribution with respect to the applicable stock. If zero or less and you did not dispose of stock during the tax year, <b>do not</b> complete the rest of Part IV. See instructions if you received more than one distribution during the current tax year. Also, see instructions for rules for reporting a nonexcess distribution on your income tax return . . . . .	<b>10e</b>	
<b>f</b>	Enter gain or loss from the disposition of stock of a section 1291 fund or former section 1291 fund. If a gain, complete line 11. If a loss, show it in brackets and <b>do not</b> complete line 11. . . . .	<b>10f</b>	
<b>11a</b>	Attach a statement for each distribution and disposition. Show your holding period for each share of stock or block of shares held. Allocate the excess distribution to each day in your holding period. Add all amounts that are allocated to days in each tax year.		
<b>b</b>	Enter the total of the amounts determined in line 11a that are allocable to the current tax year and tax years before the foreign corporation became a PFIC (pre-PFIC tax years). Enter these amounts on your income tax return as other income	<b>11b</b>	
<b>c</b>	Enter the aggregate increases in tax (before credits) for each tax year in your holding period (other than the current tax year and pre-PFIC years). (See instructions.) . . . . .	<b>11c</b>	
<b>d</b>	Foreign tax credit. (See instructions.) . . . . .	<b>11d</b>	
<b>e</b>	Subtract line 11d from line 11c. Enter this amount on your income tax return as "additional tax." (See instructions.)	<b>11e</b>	
<b>f</b>	Determine interest on each net increase in tax determined on line 11e using the rates and methods of section 6621. Enter the aggregate amount of interest here. (See instructions.) . . . . .	<b>11f</b>	

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

Complete a separate column for each outstanding election. Complete lines 9 and 10 only if there is a partial termination of the section 1294 election.

	(i)	(ii)	(iii)	(iv)	(v)	(vi)
1 Tax year of outstanding election . . . . .						
2 Undistributed earnings to which the election relates . . . . .						
3 Deferred tax . . . . .						
4 Interest accrued on deferred tax (line 3) as of the filing date . . . . .						
5 Event terminating election . . . . .						
6 Earnings distributed or deemed distributed during the tax year . . . . .						
7 Deferred tax due with this return . . . . .						
8 Accrued interest due with this return . . . . .						
9 Deferred tax outstanding after partial termination of election . . . . .						
10 Interest accrued after partial termination of election . . . . .						



# Instructions for Form 8621

(Rev. December 2011)



Department of the Treasury  
Internal Revenue Service

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

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

### General Instructions

#### What's New

- New section 1298(f) was added by section 521 of the Hiring Incentives to Restore Employment Act of 2010. However, Notice 2011-55, 2011-29 I.R.B. 53, suspends the section 1298(f) reporting requirement for tax years beginning after March 18, 2010, for PFIC shareholders that are not otherwise required to file Form 8621 as provided in the **Who Must File** section below. The suspension of the section 1298(f) reporting requirement will remain in effect pending the release of a subsequent revision of Form 8621, modified to reflect the requirements of section 1298(f), as set forth in guidance to be included in future regulations.
- Elections G and H were added to Part I of the form to provide a method for shareholders to make timely deemed dividend elections with respect to a section 1297(e) PFIC (as defined in Regulations section 1.1291-9(j)(2)(v)) (election G) and with respect to a former PFIC that was also a controlled foreign corporation (election H). See the instructions for these new elections on page 6 for additional information.
- Lines 8 through 9c were added to Part III of the form for sales and other dispositions of section 1296 stock. See *Lines 8 through 9c* on page 8 for additional information.
- The IRS has created a page on IRS.gov for information about Form 8621 and its instructions, at [www.irs.gov/form8621](http://www.irs.gov/form8621). Information about any future developments affecting Form 8621 (such as legislation enacted after we release it) will be posted on that page.

#### Who Must File

Generally, a U.S. person that is a direct or indirect shareholder of a PFIC must file Form 8621 for each tax year in which that U.S. person:

- Recognizes gain on a direct or indirect disposition of PFIC stock,
- Receives certain direct or indirect distributions from a PFIC, or

- Is making an election reportable in Part I of the form.

A **separate** Form 8621 must be filed for each PFIC in which stock is held. See *Chain of ownership* below for specific filing requirements.

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

1. A direct or indirect owner of a pass-through entity that is a direct or indirect shareholder of a PFIC,
2. A shareholder of a PFIC that is a shareholder of another PFIC, or
3. A 50%-or-more shareholder of a foreign corporation that is not a PFIC and that directly or indirectly owns stock of a PFIC.

**Interest holder of pass-through entities.** The following interest holders must file Form 8621 under the circumstances described above:

1. A U.S. person that is an interest holder of a foreign pass-through entity that is a direct or indirect shareholder of a PFIC,
2. A U.S. person that is considered (under sections 671 through 679) the shareholder of PFIC stock held in trust, and
3. A U.S. partnership, S corporation, trust (other than a trust that is subject to sections 671 through 679 for the PFIC stock), or estate that is a direct or indirect shareholder of a PFIC.

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

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

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

#### When and Where To File

Attach Form 8621 to the shareholder's tax return (or, if applicable, partnership or exempt organization return) and file both by the due date, including extensions, of the return at the Internal Revenue Service Center where the tax return is required to be filed.

If you are not required to file an income tax return or other return for the tax year, file Form 8621 directly with the Internal Revenue Service Center, Ogden, UT 84201-0201.

#### Definitions and Special Rules

##### Passive Foreign Investment Company (PFIC)

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

1. **Income test.** 75% or more of the corporation's gross income for its taxable year is passive income (as defined in section 1297(b)).
2. **Asset test.** At least 50% of the average percentage of assets (determined under section 1297(e)) held by the foreign corporation during the taxable year are assets that produce passive income or that are held for the production of passive income.

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

1. The corporation is not publicly traded for the taxable year and
2. The corporation is (a) a controlled foreign corporation within the meaning of section 957 (CFC) or (b) makes an election to use adjusted basis.

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

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

income of the 25%-or-more owned corporation.

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

**Note.** The attribution rules of section 1298(a)(2)(B) will continue to apply even if the foreign corporation is not treated as a PFIC with respect to the shareholder under section 1297(d).

### Qualified Electing Fund (QEF) Election

A PFIC is a QEF if a U.S. person who is a direct or indirect shareholder of the PFIC elects (under section 1295) to treat the PFIC as a QEF. See the instructions for Election A on page 3 for information on making this election.

### Tax Consequences for Shareholders of a QEF

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

**Note.** A shareholder that receives a distribution from an unpedigreed QEF (defined in Regulations section 1.1291-9(j)(2)(iii)) is also subject to the rules applicable to a shareholder of a section 1291 fund (see below).

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

### Section 1291 Fund

A PFIC is a section 1291 fund if:

1. The shareholder did not elect to treat the PFIC as a QEF or make a mark-to-market election with respect to the PFIC or
2. The PFIC is an unpedigreed QEF (as defined in Regulations section 1.1291-9(j)(2)(iii)).

### Tax Consequences for Shareholders of a Section 1291 Fund

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

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

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

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

See the instructions for Part IV on page 8.

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

### Mark-to-Market Election

A U.S. shareholder of a PFIC may elect to mark the PFIC stock to market if the stock is "marketable stock." See the instructions for Election F on page 5 for information on making this election.

**Marketable stock.** Marketable stock is:

- PFIC stock that is regularly traded (as defined in Regulations section 1.1296-2(b)) on:

1. A national securities exchange that is registered with the Securities and Exchange Commission (SEC),
  2. The national market system established under section 11A of the Securities Exchange Act of 1934, or
  3. A foreign securities exchange that is regulated or supervised by a governmental authority of the country in which the market is located and has the characteristics described in Regulations section 1.1296-2(c)(1)(ii).
- Stock in certain PFICs described in Regulations section 1.1296-2(d).

For additional information, including special rules for RICs that own PFIC stock, see Regulations section 1.1296-1 and 1.1296-2.

### Tax Consequences

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

1. Includes in income each year an amount equal to the excess, if any, of the fair market value of the PFIC stock as of the close of the taxable year over the shareholder's adjusted basis in such stock or
2. Is allowed a deduction equal to the lesser of:
  - a. The excess, if any, of the adjusted basis of the PFIC stock over its fair market value as of the close of the tax year or
  - b. The excess, if any, of the amount of mark-to-market gain included in the gross income of the PFIC shareholder for prior taxable years over the amount allowed such PFIC shareholder as a deduction for a loss with respect to such stock for prior taxable years.

See the instructions for Part III on page 7 for more information.

**Basis adjustment.** If the stock is held directly, the shareholder's adjusted basis in the PFIC stock is increased by the amount included in income and decreased by any deductions allowed. If the stock is owned indirectly through foreign entities, see Regulations section 1.1296-1(d)(2).

### Additional Information Required

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

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

- The number of shares in each class of stock at the end of its tax year.

**Reportable transaction disclosure statement.** A 10-percent shareholder (by vote or value) of a QEF also may be required to file Form 8886 if the QEF is considered to have participated in a reportable transaction pursuant to Regulations section 1.6011-4(c)(3)(i)(G). See Form 8886, Reportable Transaction Disclosure Statement, and Regulations section 1.6011-4 for additional information.

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## Specific Instructions

**Important:** All line references to Form 1120 and Form 1040 are to the 2007 forms. Other entities should use the comparable line on their tax return.

### Address and Identifying Number

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

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

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## Part I. Elections

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

#### Who May Make the Election

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

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

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

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

**Pass-through entities.** A QEF election made by a domestic partnership, S corporation, or estate is made in the pass-through entity's

capacity as a shareholder of a PFIC. The entity will include the QEF earnings as income for the year in which the PFIC's taxable year ends. The interest holder in the pass-through entity takes the income into account under the rules applicable to inclusions of income from the pass-through entity.

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

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

#### When To Make the Election

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

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

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

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

1. Reasonably believed, as of the due date for making the QEF election, that the foreign corporation was not a PFIC for its taxable year that ended during that year (retroactive election year);
2. Filed a Protective Statement (see below) with respect to the foreign corporation, applicable to the retroactive election year, in which the

shareholder describes the basis for its reasonable belief;

3. Extended, in the Protective Statement, the periods of limitations on the assessment of taxes under the PFIC rules for all taxable years to which the protective statement applies; and
4. Complied with the other terms and conditions of the protective statements.

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

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

1. The shareholder reasonably relied on tax advice of a competent and qualified tax professional;
2. The interest of the U.S. government will not be prejudiced if the consent is granted;
3. The shareholder requests consent before the PFIC status issue is raised on audit; and
4. The shareholder satisfies the procedural requirements under Regulations section 1.1295-3(f)(4).

#### Special Rules

For rules relating to the invalidation, termination, or revocation of a section 1295 election, see Regulations section 1.1295-1(i). Also see Regulations section 1.1295-1(c)(2) for rules relating to the years to which a section 1295 election applies.

#### How To Make the Election

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

1. Check box A in Part I of Form 8621.
2. Complete the applicable lines of Part II. Include the information provided in the PFIC Annual Information Statement, the Annual Intermediary Statement, or a combined statement (see below) received from the PFIC.
3. Attach Form 8621 to a timely filed tax return (or, if applicable, partnership return).

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

1. Complete the applicable lines of Part II and
2. Attach Form 8621 to a timely filed tax return.

## Annual Election Requirements of the PFIC or Intermediary

### PFIC Annual Information Statement.

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

1. The shareholder's pro rata share of the PFIC's ordinary earnings and net capital gain for that taxable year or
2. Sufficient information to enable the shareholder to calculate its pro rata share of the PFIC's ordinary earnings and net capital gain for that taxable year. For other information required to be included in the PFIC Annual Information Statement see Regulations section 1.1295-1(g).

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

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

**Documentation.** For all taxable years subject to the section 1295 election, the shareholder must keep copies of all Forms 8621, attachments, and all PFIC Annual Information Statements or Annual Intermediary Statements. Failure to produce these documents at the request of the IRS may result in invalidation or termination of the section 1295 election. See Regulations section 1.1295-1(f)(2)(ii). In rare and unusual circumstances, the IRS will consider requests for alternative documentation to verify the ordinary earnings and net capital gain of the PFIC. For more information, see Regulations section 1.1295-1(g)(2).

## B. Deemed Sale Election in Connection with a QEF Election

### Who May Make the Election

This is a deemed sale election under section 1291(d)(2)(A). This election may be made by a U.S. person that elects to treat a PFIC as a QEF for a foreign corporation's tax year following its first tax year as a PFIC included in the shareholder's holding period (an unpedigreed QEF). A shareholder making this election is deemed to have sold the PFIC stock as of the first day of the PFIC's first tax year as a QEF (the qualification date) for its fair market value.

### Special Rules

For purposes of this election, the following apply.

- The gain from the deemed sale is taxed as an excess distribution received on the qualification date.
- The basis of the stock is increased by the gain recognized. The manner in which the basis adjustment is made depends on whether the shareholder is a direct or indirect shareholder. See Regulations section 1.1291-10(f).
- The new holding period of the stock begins on the qualification date.
- The election may be made for stock on which the shareholder will realize a loss, but that loss cannot be recognized. In addition, there is no basis adjustment for a loss.
- After the deemed sale, the PFIC becomes a pedigreed QEF with respect to the shareholder.

### When To Make the Election

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

### How To Make the Election

To make this election:

1. Check box B in Part I,
2. Enter the gain or loss on line 10f of Part IV, and
3. If a gain is entered, complete line 11 to report the tax and interest due on the excess distribution.

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

## C. Deemed Dividend Election in Connection with a QEF Election

### Who May Make the Election

This is a deemed dividend election under section 1291(d)(2)(B). This election may be made by a U.S. person that elects to treat a PFIC that is also a CFC as a QEF for the foreign corporation's tax year following its first tax year as a PFIC included in the shareholder's holding period (an unpedigreed QEF).

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

### Special Rules

For purposes of this election, the following apply.

- The term "post-1986 earnings and profits" means the undistributed earnings and profits of the PFIC (as of the day before the qualification date) accumulated in tax years beginning after 1986 during which the CFC was a PFIC and while the shareholder held the stock.
- The basis of the shareholder's stock is increased by the amount of the deemed dividend. The manner in which the basis adjustment is made depends on whether the shareholder is a direct or indirect shareholder. See Regulations section 1.1291-9(f).
- The shareholder's holding period (solely for purposes of applying the PFIC rules after the deemed dividend election) begins on the qualification date.

### When To Make the Election

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

### How To Make the Election

To make this election:

1. Check box C in Part I,
2. Enter the dividend on line 10e of Part IV as an excess distribution, and
3. Complete line 11 to figure the tax and interest due on the excess distribution.

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

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

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

## D. Election To Extend Time for Payment of Tax

### Who May Make the Election

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

### Special Rules

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

### When To Make the Election

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

## How To Make the Election

To make this election:

1. Check box D in Part I and
2. Complete lines 3a through 4c of Part II.

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

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

## E. Deemed Sale Election with Respect to a Former PFIC or "Section 1297(e) PFIC"

### Who May Make the Election

This is a deemed sale election under section 1298(b)(1) and Regulations section 1.1297-3(b) or 1.1298-3(b). This election may be made by:

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

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

### Special Rules

- The gain from the deemed sale is taxed as an excess distribution.
- The basis in the stock is increased by the amount of the excess distribution taxed to the shareholder making Election E.
- The new holding period of the stock begins on the date after the deemed sale.
- Election E may be made for stock on which there would be a loss, but the loss is not recognized.

For more information on making this election, see Regulations sections 1.1297-3(b) and 1.1298-3(b).

### When To Make the Election

This election must be made by the due date of the shareholder's original tax return (or by filing an amended return within 3 years of the due date, as extended under section 6081, of the original return) for the tax year that includes, as appropriate, either the last day of the last year of the foreign corporation during which it qualified as a PFIC or the first day on which the qualified portion of the shareholder's holding period in the PFIC begins, as

determined under section 1297(d). However see Form 8621-A (and Regulations sections 1.1297-3(e) and 1.1298-3(e)) if the 3-year period has expired.

## How To Make the Election

To make this election:

1. Check box E in Part I and
2. Enter the gain or loss on line 10f of Part IV. If a gain, complete the rest of Part IV.

## F. Election To Mark-to-Market PFIC Stock (Section 1296 Election)

### Who May Make the Election

Election F may be made by:

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

For more information, see section 1296 and Regulations section 1.1296-1. See sections 1296(f) and (g) and Regulations sections 1.1296-1(e) and (h)(1)(ii) for information regarding stock owned through certain foreign entities.

### When To Make the Election

This election must be made on or before the due date (including extensions) of the U.S. person's income tax return for the tax year in which the stock is marked to market. A section 1296 election by a CFC is made by its controlling shareholders. For more information, see Regulations section 1.1296-1(h)(1)(ii). Once made, the election applies to all subsequent tax years unless the election is revoked or terminated pursuant to Regulations section 1.1296-1(h)(3).

### How To Make the Election

To make the election:

1. Check box F in Part I,
2. Complete Part III to report the gain or loss, and
3. Complete Part IV if the tax and interest rules of section 1291 (explained in the Part IV instructions, which begin on page 8) apply.

**Coordination of Election F with section 1291.** If Election F is made for any tax year, then, except as provided in *Coordination rules for first year of election* below, do not complete Part IV of Form 8621 with respect to any stock for which that election is made.

**Coordination rules for first year of election.** See section 1296(j) and Regulations section 1.1296-1(i) for coordination rules that apply for the first year that election F is made.

**Coordination of other mark-to-market rules under chapter 1 of the Code with section 1291.**  
See Regulations section 1.1291-1(c)(4).

## **G. Deemed Dividend Election With Respect To a “Section 1297(e) PFIC”**

### **Who May Make the Election**

This is a deemed dividend election under section 1298(b)(1) and Regulations section 1.1297-3(c). This election may be made by a shareholder that is a U.S. shareholder (as defined in section 951(b)) of a foreign corporation that is a CFC and that is not treated as a PFIC with respect to the U.S. shareholder under section 1297(d).

### **Special Rules**

A shareholder making this election is treated as receiving a dividend of its pro rata share of the post-1986 earnings and profits (defined below) of the Section 1297(e) PFIC on the CFC qualification date (defined below). The deemed dividend is taxed under section 1291 as an excess distribution, allocated only to the days in the shareholder's holding period during which the foreign corporation qualified as a PFIC. For this purpose, the shareholder's holding period ends on the day before the CFC qualification date. After the deemed dividend election, the shareholder's stock is not treated as stock in a PFIC.

For purposes of this election, the following rules apply:

- The basis of the shareholder's stock is increased by the amount of the deemed dividend. The manner in which the basis adjustment is made depends on whether the shareholder is a direct or indirect shareholder (as defined below). See Regulations section 1.1297-3(c)(6).
- For purposes of the PFIC rules only, the shareholder's new holding period begins on the CFC qualification date.

### **When To Make the Election**

This election must be made by the due date of the shareholder's original tax return (or by filing an amended return within 3 years of the due date, as extended under section 6081, of the original return) for the tax year that includes the first day on which the qualified portion of the shareholder's holding period in the PFIC begins, as determined under section 1297(d). However see Form 8621-A (and Regulations section 1.1297-3(e)) if the 3-year period has expired.

### **How To Make the Election**

To make this election, check box G in Part I and complete Part IV, line 11.

Also attach to Form 8621 the information specified below.

### **Attachments**

The shareholder must attach a statement to Form 8621 that shows the calculation of its pro rata share of the post-1986 earnings and profits of the section 1297(e) PFIC (as defined in Regulations section 1.1291-9(j)(2)(v)) that is treated as distributed to the shareholder on the CFC qualification date. The post-1986 earnings and profits may be reduced (but not below zero) by the amount that the shareholder satisfactorily shows was previously included in its income or in the income of another U.S. person. The shareholder shows this by including in the statement mentioned above the following information:

- The CFC qualification date, as defined in Regulations section 1.1297-3(d), for the Section 1297(e) PFIC.
- The beginning and ending dates of the taxable year of the shareholder in which the CFC qualification date falls (i.e., the election year).
- The shareholder's pro rata share of the post-1986 earnings and profits of the Section 1297(e) PFIC that is treated as distributed to the shareholder on the CFC qualification date, including a schedule that shows the calculation of this amount as required under Regulations section 1.1297-3(c)(5)(ii). In addition, if the shareholder filed a Form 5471 for the Section 1297(e) PFIC for the election year, attach Schedule J (Form 5471).
- The name, address, and identifying number of the U.S. person and the amount that was included in income.
- The tax year in which the amount was previously included in income.
- A description of the transaction in which the shareholder acquired the stock of the Section 1297(e) PFIC from the other U.S. person.
- The provision of law under which the shareholder's holding period includes the holding period of the other U.S. person.

For more information on making election G, see Regulations section 1.1297-3(c).

## **H. Deemed Dividend Election With Respect To a Former PFIC**

### **Who May Make the Election**

This is a deemed dividend election under section 1298(b)(1) and Regulations section 1.1298-3(c). This election may be made by a shareholder of a foreign corporation that no longer qualifies as a PFIC under either the income or asset test of section 1297(a)

provided that the foreign corporation was a CFC during its last taxable year as a PFIC.

### **Special Rules**

A shareholder making this election is treated as receiving a dividend of its pro rata share of the post-1986 earnings and profits (defined below) of the former PFIC on the termination date (defined below). The deemed dividend is taxed under section 1291 as an excess distribution, allocated only to the days in the shareholder's holding period during which the foreign corporation qualified as a PFIC. For this purpose, the shareholder's holding period ends on the termination date. After the deemed dividend election, the shareholder's stock is not treated as stock in a PFIC.

For purposes of this election, the following rules apply:

- The basis of the shareholder's stock is increased by the amount of the deemed dividend. The manner in which the basis adjustment is made depends on whether the shareholder is a direct or indirect shareholder (as defined below). See Regulations section 1.1298-3(c)(6).
- For purposes of the PFIC rules only, the shareholder's new holding period begins on the day following the termination date.

### **When To Make the Election**

This election must be made by the due date of the shareholder's original tax return (or by filing an amended return within 3 years of the due date, as extended under section 6081, of the original return) for the tax year that includes the first day on which the qualified portion of the shareholder's holding period in the PFIC begins, as determined under section 1297(d). However see Form 8621-A (and Regulations section 1.1298-3(e)) if the 3-year period has expired.

### **How To Make the Election**

To make this election, check box H in Part I and complete Part IV, line 11. Also attach to Form 8621 the information specified below.

### **Attachments**

The shareholder must attach a statement to Form 8621 that shows the calculation of its pro rata share of the post-1986 earnings and profits of the former PFIC that is treated as distributed to the shareholder on the termination date. The post-1986 earnings and profits may be reduced (but not below zero) by the amount that the shareholder satisfactorily shows was previously included in its income or in the income of another U.S. person. The shareholder shows this by



including in the statement mentioned above the following information:

- The termination date, as defined in Regulations section 1.1298-3(d), for the former PFIC.
- The beginning and ending dates of the taxable year of the shareholder in which the termination date falls (i.e., the election year).
- The shareholder's pro rata share of the post-1986 earning and profits of the former PFIC that is treated as distributed to the shareholder on the termination date, including a schedule that shows the calculation of this amount as required under Regulations section 1.1298-3(c)(5)(ii). In addition, if the shareholder filed a Form 5471 for the former PFIC for the election year, attach Schedule J (Form 5471).
- The name, address, and identifying number of the U.S. person and the amount that was included in income.
- The tax year in which the amount was previously included in income.
- The provision of law under which the amount was previously included in income.
- A description of the transaction in which the shareholder acquired the stock of the former PFIC from the other U.S. person.
- The provision of law under which the shareholder's holding period includes the holding period of the other U.S. person.

For more information on making election H, see Regulations section 1.1298-3(c).

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## Part II. Income From a QEF

For any tax year in which the foreign corporation is not treated as a QEF because it is not a PFIC under section 1297(a), the shareholder is not required to complete Part II. However, the section 1295 election is not terminated. If the foreign corporation is treated as a PFIC in any subsequent tax year, the original election continues to apply and the shareholder must include in Part II its pro rata share of ordinary earnings and net capital gain and also must comply with the section 1295 annual reporting requirements.

All QEF shareholders complete lines 1a through 2c. If you are making Election D, also complete lines 3a through 4c.

### Lines 1 and 2

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

your pro rata share. See *Annual Election Requirements of the PFIC or Intermediary* on page 4.

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

**Line 1c.** This amount is treated as ordinary income on your tax return.

For a noncorporate taxpayer, include this amount as "other income" on line 21 of Form 1040, or on the comparable line of other noncorporate tax returns. For a corporate taxpayer, include this amount as "other income" on line 10 of Form 1120, or on the comparable line of other corporate tax returns.

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

### Line 3

If you receive a distribution from the QEF during the current tax year, the distribution is first treated as a distribution out of the earnings and profits of the QEF accumulated during the year. If the total amount distributed (line 3b) exceeds the amount included in income (line 3a), the excess is treated as distributed out of the most recently accumulated earnings and profits and is taxable to you unless you satisfactorily demonstrate that the excess was previously included in the income of another U.S. person. To satisfactorily demonstrate this, the QEF shareholder must attach a statement to Form 8621 that includes the information listed under *Attachments* for Election C on page 5.

### Line 4

**Line 4a.** Enter the total tax on your total taxable income (including your share of undistributed earnings of the QEF) for the tax year (e.g., from Form 1120, Schedule J, line 10, or Form 1040, line 63).

For this purpose, "undistributed earnings" is the excess, if any, of the amount included in gross income under section 1293(a) over the sum of the amount of any distribution and the portion of the amount attributable to stock in the QEF that you transferred or

otherwise disposed of before the end of the QEF's tax year.

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

**Line 4c.** For corporations, enter this tax on Form 1120, Schedule J, in brackets to the left of the entry space for line 10. Subtract that amount from the total of lines 7 through 9 and enter the difference on line 10.

For individuals, enter this tax on Form 1040 in brackets to the left of the entry space for line 63. Subtract that amount from the total of lines 57 through 62, and enter the difference on line 63.

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

A shareholder that has made a mark-to-market election with respect to PFIC stock completes lines 5a through 7 with respect to PFIC stock that the shareholder holds at the close of its taxable year, and lines 8a through 9c with respect to PFIC stock that it sold or disposed of during its taxable year.

### Lines 5a Through 7

If the fair market value of the PFIC stock as of the close of the tax year is more than the U.S. person's adjusted basis in the stock, the excess is treated as ordinary income.

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

1. The amount of the excess (line 5c) or
2. The unreversed inclusions (defined below) with respect to such stock (line 6).

This amount is treated as an ordinary loss, and as a deduction allowable in computing adjusted gross income.

**Unreversed inclusions.** Unreversed inclusions are the excess of the amounts that were included in income under the mark-to-market rules for prior tax years over the amounts allowed as a deduction under the mark-to-market rules for prior tax years. See section 1296(d) and Regulations section 1.1296-1(a)(3).

**Lines 5c and 7.** Corporations and individuals should include the gain or (loss) on the "other income" line of their tax returns. Other entities should include this amount on the comparable

line of their tax return. However, Regulated Investment Companies, for purposes of section 851(b), should treat this amount as a dividend.

If a CFC makes a mark-to-market election with respect to a PFIC in which it owns stock, any line 5c gain is treated as foreign personal holding company income and any line 7 loss is treated as a deduction that is allocable to foreign personal holding company income.

### Lines 8 through 9c

Complete lines 8 through 9c if you sold or otherwise disposed of any section 1296 stock during the tax year. For purposes of lines 8 through 9c, "section 1296 stock" is any stock for which the taxpayer has made a mark-to-market election pursuant to section 1296(a), which is in effect for the tax year and for which the coordination rule of Regulations section 1.1296-1(i) does not apply.

**Line 8c.** If the fair market value of the stock on the date of sale or disposition (line 8a) is more than the U.S. person's adjusted basis in the stock on the date of sale or disposition (line 8b), the line 8c excess is a gain and is treated as ordinary income. Corporations and individuals should include the gain on the "other income" line of their tax returns. Other entities should include this amount on the comparable line of their tax return.

If the adjusted basis of the stock (line 8b) exceeds its fair market value (line 8a), the excess is a loss and is entered on line 8c as such. Furthermore, the filer must complete lines 9a and 9b, and, if applicable, line 9c.

**Line 9a.** Enter any unreversed inclusions with respect to the stock (see definition above).

**Line 9b.** Enter the loss from line 8c, but only to the extent of unreversed inclusions on line 9a. This loss is treated as ordinary loss. Corporations and individuals should include the loss on the "other income" line of their tax returns. Other entities should include this amount on the comparable line of their tax return. However, Regulated Investment Companies, for purposes of section 851(b), should treat this amount as a dividend.

**Line 9c.** Enter the amount by which the loss on line 8c exceeds the unreversed inclusions. This amount is subject to the rules generally applicable to losses provided elsewhere in the Code and regulations thereunder. See Regulations section 1.1296-1(c)(4)(ii).

**Multiple dispositions.** In the case of multiple dispositions, attach a statement for each disposition using the

same format shown on lines 8 through 9c. Then:

- Enter "multiple" on lines 8a, 8b, and 9a.
- Enter your net ordinary gains on line 8c (do not enter any net losses on line 8c).
- Enter your net ordinary losses on line 9b.
- Enter your net "other" losses on line 9c.

For more information relating to mark-to-market elections under section 1296, see Regulations sections 1.1296-1 and 1.1296-2.

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## Part IV. Distributions From and Dispositions of Stock of a Section 1291 Fund

See *Section 1291 Fund* on page 2 for the definition of section 1291 fund. See page 2 for a brief summary of the tax consequences for shareholders of a section 1291 fund.

Complete a separate Part IV for each excess distribution. That is, if you receive a distribution from a section 1291 fund with respect to shares for which you have different holding periods, complete lines 10a through 10e separately for each block of shares that has the same holding period ("applicable stock"). If you dispose of stock in a section 1291 fund for which you have different holding periods, complete line 10f for each block of shares that has the same holding period.

### Line 10

#### Lines 10a and 10b

Enter your total distributions from the section 1291 fund with respect to the applicable stock for the periods indicated.

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

**Line 10a.** If the holding period of the applicable stock began in the current year, there is no excess distribution and Part IV should be completed as follows: Enter on line 10a the total distributions you received from the section 1291 fund with respect to that stock during the current tax year. If you did not dispose of that stock during the tax year, do not complete the rest of Part IV. If you did dispose of that stock during the tax year, skip lines 10b

through 10e and complete lines 10f and 11.

If the holding period of the applicable stock began in the current tax year, the line 10a amount is taxed according to the rules of section 301. To the extent that section 301(c)(1) is applicable, include the amount as a dividend on your income tax return. For corporations, include this amount on Form 1120, Schedule C, line 13. For individuals, include this line 10a amount on Form 1040, line 9a (and, if applicable, on Schedule B (Form 1040), line 5).

### Line 10c

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

### Line 10e

**Nonexcess distribution.** The nonexcess distribution is the lesser of line 10a or line 10d. This amount is taxed according to the rules of section 301. To the extent that section 301(c)(1) is applicable, include the amount as a dividend on your income tax return. For corporations, include this amount on Form 1120, Schedule C, line 13. For individuals, include this amount on Form 1040, line 9a (and, if applicable, on Schedule B (Form 1040), line 5).

**Excess distributions.** If you received more than one distribution during the tax year with respect to the applicable stock, the excess distribution is apportioned among all actual distributions. Each apportioned amount is treated as a separate excess distribution.

### Line 10f

Gain recognized on the disposition of stock of a section 1291 fund is treated as an excess distribution. Stock of a section 1291 fund is considered disposed of if it is sold, transferred, or pledged.

### Line 11

#### Lines 11a and 11b

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

Special rules apply to the holding period if:

- The deemed dividend election (Election C) is made. See the instructions for Election C beginning on page 4.



- The mark-to-market election (Election F) is made or was made in a prior year (see section 1291(a)(3)(A)(ii)).
- The deemed dividend election with respect to a Section 1297(e) PFIC (Election G) or with respect to a Former PFIC (Election H) is made. See the instructions for Election G and Election H on page 6.

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

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

### Line 11c

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

### Line 11d

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

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

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

the general rules of the foreign tax credit.

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

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

### Line 11e

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

For individuals, enter this amount on Form 1040 to the left of the line 44 entry space. Enter "Sec. 1291" next to the amount and include the amount as part of the total for line 44.

For corporations, enter this amount on Form 1120, Schedule J, to the left of the entry space for line 2. Enter "Sec. 1291" next to the amount and include it as part of the total for line 2. Other entities should use the comparable line on their income tax return.

### Line 11f

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

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

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

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## Part V. Status of Prior Year Section 1294 Elections and Termination of Section 1294 Elections

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

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

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

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

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

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

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

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

first terminate the most recently made election.

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

- A distribution of earnings will terminate an election to the extent the election is attributable to the earnings distributed.
- A loan, pledge, or guarantee by the QEF made directly or indirectly to the electing shareholder or related person will terminate an election to the extent of the undistributed earnings equal to the amount loaned, secured, or guaranteed.
- A disposition of stock will terminate all elections with respect to the undistributed earnings attributable to that stock.
- A change in status of the QEF will terminate all elections.

For more information, see Regulations section 1.1294-1T(e).

**Line 7.** Enter the deferred tax due from the termination of the section 1294 election. The deferred tax entered on line 3 is due if the election was completely terminated. If the election was only partially terminated, a proportionate amount of the deferred

tax is due. That amount is determined by multiplying the amount entered on line 3 by a fraction, of which the numerator is the amount entered on line 6 and the denominator is the amount entered on line 2. The deferred tax is due by the due date of the shareholder's income tax return (without regard to extensions) for the year of termination.

When the election is terminated, corporations include the deferred tax as part of the total for Form 1120, Schedule J, line 10. Also enter the deferred tax to the left of line 10 and label it as "Sec. 1294 deferred tax."

For individuals, enter the deferred tax as part of the total for Form 1040, line 63. Also enter the deferred tax to the left of line 63, and label it as "Sec. 1294 deferred tax."

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

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

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

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

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

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**Disclosure, Privacy Act, and Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. Sections 6001, 6011, 6012(a), 6103, and 6109, and their regulations, require you to provide this information. We need this information to ensure that you are complying with the Internal Revenue laws and to allow us to figure and determine the right amount of tax.

Section 6109 requires that you provide your identifying number on the return. This is so we know who you are and can process your return and other papers. You must fill in all parts of the tax form that apply to you. If you do not file a return under circumstances requiring its filing, do not provide the information we ask for, or provide fraudulent information, you may be charged penalties and be subject to criminal prosecution.

Generally, tax returns and return information are confidential, as required by section 6103. However, section 6103 allows or requires the Internal Revenue Service to disclose or give the information shown on your tax return to others as described in the Code. For example, we may disclose your tax information to the Department of Justice for civil and criminal litigation. We may also disclose this information to cities, states, the District of Columbia, and U.S. possessions and commonwealths for use in administering their tax laws, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

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

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

<b>Recordkeeping</b> .....	15 hr., 4 min.
<b>Learning about the law or the form</b> .....	11 hr., 13 min.
<b>Preparing and sending the form to the IRS</b> .....	20 hr., 21 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. **Do not** send the tax form to this office. Instead, see *When and Where To File* on page 1.

# Statement of Specified Foreign Financial Assets

▶ See separate instructions      ▶ Attach to your tax return

If you have attached additional sheets, check here

Name(s) shown on return	Identifying number
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Number, street, and room or suite no. (if a P.O. box, see instructions)

City or town, province or state, and country (including postal code)

For tax year beginning \_\_\_\_\_, 20\_\_\_\_, and ending \_\_\_\_\_, 20\_\_\_\_

**Note.** All information must be in English. Show all amounts in U.S. dollars. Show currency conversion rates in Part I, line 6(2), or Part II, line 6(2).

Type of filer

- a** Specified individual      (1)  Married filing a joint return      (2)  Other individual  
**b** Specified domestic entity      (1)  Partnership      (2)  Corporation      (3)  Trust      (4)  Estate

Check this box if this is an original, amended, or supplemental Form 8938 for attachment to a previously filed return . . . . .

**Part I Foreign Deposit and Custodial Accounts** (see instructions)

If you have more than one account to report, attach a continuation sheet with the same information for each additional account (see instructions).

<b>1</b> Type of account <input type="checkbox"/> Deposit <input type="checkbox"/> Custodial	<b>2</b> Account number or other designation
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- 3** Check all that apply      **a**  Account opened during tax year      **b**  Account closed during tax year  
    **c**  Account jointly owned with spouse      **d**  No tax item reported in Part III with respect to this asset

**4** Maximum value of account during tax year . . . . . \$

**5** Did you use a foreign currency exchange rate to convert the value of the account into U.S. dollars? . . .  Yes     No

**6** If you answered "Yes" to line 5, complete all that apply.

<b>(1)</b> Foreign currency in which account is maintained	<b>(2)</b> Foreign currency exchange rate used to convert to U.S. dollars	<b>(3)</b> Source of exchange rate used if not from U.S. Treasury Financial Management Service
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**7** Name of financial institution in which account is maintained

**8** Mailing address of financial institution in which account is maintained. Number, street, and room or suite no.

**9** City or town, province or state, and country (including postal code)

**Part II Other Foreign Assets** (see instructions)

**Note.** If you reported specified foreign financial assets on Forms 3520, 3520-A, 5471, 8621, or 8865, you do not have to include the assets on Form 8938. You must complete Part IV. See instructions.

If you have more than one asset to report, attach a continuation sheet with the same information for each additional asset (see instructions).

<b>1</b> Description of asset	<b>2</b> Identifying number or other designation
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- 3** Complete all that apply  
**a** Date asset acquired during tax year, if applicable . . . . .  
**b** Date asset disposed of during tax year, if applicable . . . . .  
**c**  Check if asset jointly owned with spouse      **d**  Check if no tax item reported in Part III with respect to this asset

**4** Maximum value of asset during tax year (check box that applies)  
**a**  \$0 - \$50,000      **b**  \$50,001 - \$100,000      **c**  \$100,001 - \$150,000      **d**  \$150,001 - \$200,000  
**e** If more than \$200,000, list value . . . . . \$

**5** Did you use a foreign currency exchange rate to convert the value of the asset into U.S. dollars? . . .  Yes     No

**Part II Other Foreign Assets (continued)**

**6** If you answered "Yes" to line 5, complete all that apply.

<b>(1)</b> Foreign currency in which asset is denominated	<b>(2)</b> Foreign currency exchange rate used to convert to U.S. dollars	<b>(3)</b> Source of exchange rate used if not from U.S. Treasury Financial Management Service
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**7** If asset reported in Part II, line 1, is stock of a foreign entity or an interest in a foreign entity, report the following information.

**a** Name of foreign entity \_\_\_\_\_

**b** Type of foreign entity      **(1)**  Partnership      **(2)**  Corporation      **(3)**  Trust      **(4)**  Estate

**c**  Check if foreign entity is a PFIC

**d** Mailing address of foreign entity. Number, street, and room or suite no. \_\_\_\_\_

**e** City or town, province or state, and country (including postal code) \_\_\_\_\_

**8** If asset reported in Part II, line 1, is not stock of a foreign entity or an interest in a foreign entity, enter the following information for the asset.

**Note.** If this asset has more than one issuer or counterparty, attach a continuation sheet with the same information for each additional issuer or counterparty (see instructions).

**a** Name of issuer or counterparty \_\_\_\_\_  
Check if information is for       Issuer       Counterparty

**b** Type of issuer or counterparty  
**(1)**  Individual      **(2)**  Partnership      **(3)**  Corporation      **(4)**  Trust      **(5)**  Estate

**c** Check if issuer or counterparty is a       U.S. person       Foreign person

**d** Mailing address of issuer or counterparty. Number, street, and room or suite no. \_\_\_\_\_

**e** City or town, province or state, and country (including postal code) \_\_\_\_\_

**Part III Summary of Tax Items Attributable to Specified Foreign Financial Assets (see instructions)**

Asset Category	Tax item	Amount reported on form or schedule	Where reported	
			Form and line	Schedule and line
I. Foreign Deposit and Custodial Accounts	<b>a</b> Interest	\$		
	<b>b</b> Dividends	\$		
	<b>c</b> Royalties	\$		
	<b>d</b> Other income	\$		
	<b>e</b> Gains (losses)	\$		
	<b>f</b> Deductions	\$		
	<b>g</b> Credits	\$		
II. Other Foreign Assets	<b>a</b> Interest	\$		
	<b>b</b> Dividends	\$		
	<b>c</b> Royalties	\$		
	<b>d</b> Other income	\$		
	<b>e</b> Gains (losses)	\$		
	<b>f</b> Deductions	\$		
	<b>g</b> Credits	\$		

**Part IV Excepted Specified Foreign Financial Assets (see instructions)**

If you reported specified foreign financial assets on the following forms, check the appropriate box(es). Indicate number of forms filed. You do not need to include these assets on Form 8938 for the tax year.

3520    Number of forms \_\_\_\_\_       3520-A    Number of forms \_\_\_\_\_       5471    Number of forms \_\_\_\_\_

8621    Number of forms \_\_\_\_\_       8865    Number of forms \_\_\_\_\_

# Instructions for Form 8938

(November 2011)

## Statement of Specified Foreign Financial Assets



Department of the Treasury  
Internal Revenue Service

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

### General Instructions

**Future developments.** The IRS has created a page on IRS.gov for information about Form 8938 and its instructions, at [www.irs.gov/form8938](http://www.irs.gov/form8938). Information about any future developments affecting Form 8938 (such as legislation enacted after we release it) will be posted on that page.

### What's New

**New reporting requirements.** For tax years beginning after March 18, 2010, certain individuals must file new Form 8938 to report the ownership of specified foreign financial assets if the total value of those assets exceeds an applicable threshold amount (the "reporting threshold"). The reporting threshold varies depending on whether an individual lives in the United States or files a joint income tax return with his or her spouse.

Specified foreign financial assets generally include the following assets.

- Any financial account maintained by a foreign financial institution.
- To the extent held for investment and not held in a financial account, any stock or securities issued by someone that is not a U.S. person, any interest in a foreign entity, and any financial instrument or contract with an issuer or counterparty that is not a U.S. person.

For more information on who must file and the types of foreign financial assets that must be reported, see *Who Must File, Specified Foreign Financial Assets, Interests in Specified Foreign Financial Assets, and Exceptions to Reporting*, later.

**New failure-to-file and accuracy-related penalties.** If you are required to file Form 8938 and fail to do so, or if you have an understatement of tax or omission of income relating to a specified foreign financial asset, you may owe a penalty. See *Penalties*, later.



**Filing Form 8938 does not relieve you of the requirement to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), if you are otherwise required to file Form TD F 90-22.1.**

**Statute of limitations.** If you fail to file Form 8938 or fail to report a specified foreign financial asset that you are required to report, the statute of limitations for the tax year may remain open for all or a part of your income tax return until 3 years after the date on which you file Form 8938.

### Purpose of Form

Use Form 8938 to report your specified foreign financial assets if the total value of all the specified foreign financial assets in which you have an interest is more than the appropriate reporting threshold. See *Determining the Reporting Threshold That Applies to You*, later.

### When and How To File

Attach Form 8938 to your annual return and file by the due date (including extensions) for that return.

An annual return includes the following returns.

- Form 1040.
- Form 1120.
- Form 1065.
- Form 1041.
- Form 1120-S.
- Form 1040NR.

A reference to an "annual return" or "income tax return" in the instructions includes a reference to any return listed here, whether it is an income tax return or an information return.

**Transitional rule for 2011.** Your obligation to file Form 8938 in 2011 is deferred to 2012 if you are an individual who satisfies all of the following.

- You had a tax year that began after March 18, 2010.
- You were required to file Form 8938.
- You filed an annual return before Form 8938 was released.

See Notice 2011-55, 2011-29 I.R.B. 53, available at [http://www.irs.gov/irb/2011-29\\_IRB/ar06.html](http://www.irs.gov/irb/2011-29_IRB/ar06.html). You must now satisfy your filing obligation for any such prior tax year by filing Form 8938 for such prior year with your annual return for your current tax year. If you are required to complete a Form 8938 for your prior tax year and your current tax year, attach both forms to your income tax return for the current tax year.

**Note.** If you are filing Form 8938 for a prior year under this transitional rule, check the box on Form 8938 to show it is being filed for a prior tax year.

### Who Must File

Unless an exception applies, you must file Form 8938 if you are a specified person that has an interest in specified foreign financial assets and the value of those assets is more than the applicable reporting threshold. See *Determining the Reporting Threshold That Applies to You*, later.

A specified person includes any specified individual or, to the extent provided in future regulations, a specified domestic entity. If the value of your specified foreign financial assets is more than the appropriate reporting threshold and no exception applies, file Form 8938 even if none of the specified foreign financial assets affect your tax liability for the tax year.

**TIP** **Exception if no income tax return required.** If you do not have to file an income tax return for the tax year, you do not have to file Form 8938, even if the value of your specified foreign financial assets is more than the appropriate reporting threshold.

**Specified individual.** You are a specified individual if you are one of the following.

- A U.S. citizen.
- A resident alien of the United States for any part of the tax year (but see *Reporting Period*, later).

- A nonresident alien who makes an election to be treated as a resident alien for purposes of filing a joint income tax return.
- A nonresident alien who is a bona fide resident of American Samoa or Puerto Rico. See Pub. 570, Tax Guide for Individuals With Income From U.S. Possessions, for a definition of bona fide resident.

**Special rules for resident aliens.**

You are a resident alien if you are treated as a resident alien for U.S. tax purposes under the green card test or the substantial presence test. For more information, see Pub. 519, U.S. Tax Guide for Aliens. If you qualify as a resident alien under either rule, you are a specified individual even if you elect to be taxed as a resident of a foreign country under the provisions of a U.S. income tax treaty. If you have to file Form 8938, attach it to your Form 1040NR.

**Specified domestic entity.** The IRS anticipates issuing regulations that will require a domestic entity to file Form 8938 if the entity is formed or availed of to hold specified foreign financial assets and the value of those assets exceeds the appropriate reporting threshold. Until the IRS issues such regulations, only individuals must file Form 8938.

**Determining the Reporting Threshold That Applies to You**

If you satisfy the reporting threshold discussed next that applies to you and no exception applies, file Form 8938 with your income tax return.

**Unmarried taxpayer living in the United States.** If you are not married and not living abroad, you satisfy the reporting threshold only if the total value of your specified foreign financial assets is more than \$50,000 on the last day of the tax year or more than \$75,000 at any time during the tax year.

**Married taxpayers filing a joint income tax return and living in the United States.** If you are married and you and your spouse file a joint income tax return and do not live abroad, you satisfy the reporting threshold only if the total value of your specified foreign financial assets is more than \$100,000 on the last day of the tax year or more than \$150,000 at any time during the tax year.

**Married taxpayers filing separate income tax returns and living in the United States.** If you are married, file a separate income tax return from your spouse, and do not live abroad, you satisfy the reporting

threshold only if the total value of your specified foreign financial assets is more than \$50,000 on the last day of the tax year or more than \$75,000 at any time during the tax year.

**Taxpayers living abroad.** If your tax home is in a foreign country and you meet one of the presence abroad tests described next, you satisfy the reporting threshold if you are not filing a joint return and the total value of your specified foreign financial assets is more than \$200,000 on the last day of the tax year or more than \$300,000 at any time during the tax year.

If you are married and file a joint income tax return, you satisfy the reporting threshold only if the total value of all specified foreign financial assets you or your spouse owns is more than \$400,000 on the last day of the tax year or more than \$600,000 at any time during the tax year.

**Presence abroad.** You satisfy the presence abroad test if you are one of the following.

- A U.S. citizen who has been a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire tax year.
- A U.S. citizen or resident who is present in a foreign country or countries at least 330 full days during any period of 12 consecutive months that ends in the tax year being reported.

**Determining the Total Value of Your Specified Foreign Financial Assets**

You must figure the total value of the specified foreign financial assets in which you have an interest to determine if you satisfy the reporting threshold that applies to you. To determine if you have an interest in a specified foreign financial asset, see *Interests in Specified Foreign Financial Assets*, later.

**Valuing specified foreign financial assets.** The value of a specified foreign financial asset for purposes of determining the total value of specified foreign financial assets in which you have an interest during the tax year or on the last day of the tax year is the asset's fair market value. For purposes of figuring the total value of specified foreign financial assets, the value of a specified foreign financial asset denominated in a foreign currency must be first determined in the foreign currency and then converted to U.S. dollars. See *Foreign currency conversion in Reporting Maximum Value*, later, for

rules on determining and applying the appropriate foreign currency exchange rate.

**Value of an interest in a foreign trust during the tax year.** If you do not know or have reason to know based on readily accessible information the fair market value of your interest in a foreign trust during the tax year, the value to be included in determining the total value of your specified foreign financial assets during the tax year is the maximum value of your interest in the foreign trust. See *Valuing interests in foreign trusts in Reporting Maximum Value*, later, for rules on determining the maximum value of an interest in a foreign trust.

**Value of an interest in a foreign estate, foreign pension plan, and foreign deferred compensation plan.** If you do not know or have reason to know based on readily accessible information the fair market value of your interest in a foreign estate, foreign pension plan, or foreign deferred compensation plan during the tax year, the value to be included in determining the total value of your specified foreign financial assets during the tax year is the fair market value, determined as of the last day of the tax year, of the currency and other property distributed during the tax year to the specified person as a beneficiary or participant. If you received no distributions during the tax year and do not know or have reason to know based on readily accessible information the fair market value of your interest, use a value of zero for the interest.

**Asset with no positive value.** If the maximum value of a specified foreign financial asset is less than zero, use a value of zero for the asset.

**Assets reported on another form.** In determining if you satisfy the reporting threshold that applies to you, include the value of all specified foreign financial assets, even if they are reported on another form listed in Part IV. See *Part IV. Excepted Specified Foreign Financial Assets*, later.

**Joint interests.** If you jointly own an asset with someone else, the value that you use to determine the total value of all of your specified foreign financial assets depends on whether the other owner is your spouse and, if so, whether your spouse is a specified individual and whether you file a joint or separate return.

**Joint ownership with spouse filing joint income tax return.** If you and your spouse file a joint income tax return and, therefore, would file one combined Form 8938 for the tax year, include the value of the asset jointly owned with your spouse only once to determine the total value of all of the specified foreign financial assets you and your spouse own.

**Joint ownership with spouse filing separate income tax return.** If you and your spouse are specified individuals and you each file a separate annual return, include one-half of the value of the asset jointly owned with your spouse to determine the total value of all of your specified foreign financial assets.

**Joint ownership with a spouse who is not a specified individual or someone other than a spouse.** Each joint owner includes the entire value of the jointly owned asset to determine the total value of all of that joint owner's specified foreign financial assets.

**Examples.** These examples may help you decide if you have to file Form 8938.

**I am not married and do not live abroad. The total value of my specified foreign financial assets does not exceed \$49,000 during the tax year.** You do not have to file Form 8938. You do not satisfy the reporting threshold of more than \$50,000 on the last day of the tax year or more than \$75,000 at any time during the tax year.

**I am not married and do not live abroad. I sold my only specified foreign financial asset on October 15, when its value was \$125,000.** You have to file Form 8938. You satisfy the reporting threshold even though you do not hold any specified foreign financial assets on the last day of the tax year because you did own specified foreign financial assets of more than \$75,000 at any time during the tax year.

**I am not married and do not live abroad. An unrelated U.S. resident and I jointly own a specified foreign financial asset valued at \$60,000.** You each have to file Form 8938. You each satisfy the reporting threshold of more than \$50,000 on the last day of the tax year.

**I am not married and do not live abroad. I own an entity disregarded for tax purposes, which owns one specified foreign financial asset valued at \$30,000.**

**In addition, I own a specified foreign financial asset valued at \$25,000.** You have to file Form 8938. You own both the specified foreign financial asset owned by the disregarded entity and the specified foreign financial asset you own directly, for a total value of \$55,000. You satisfy the reporting threshold of more than \$50,000 on the last day of the tax year.

**My spouse and I do not live abroad and file a joint income tax return. We jointly own a single specified foreign financial asset valued at \$60,000.** You and your spouse do not have to file Form 8938. You do not satisfy the reporting threshold of more than \$100,000 on the last day of the tax year or more than \$150,000 at any time during the tax year.

**My spouse and I do not live abroad, file a joint income tax return, and jointly and individually own specified foreign financial assets. On the last day of the tax year, my spouse and I jointly own a specified foreign financial asset with a value of \$90,000. My spouse has a separate interest in a specified foreign financial asset with a value of \$10,000. I have a separate interest in a specified foreign financial asset with a value of \$1,000.** You and your spouse have to file a combined Form 8938. You and your spouse have an interest in specified foreign financial assets in the amount of \$101,000 on the last day of the tax year. This is the entire value of the specified foreign financial asset that you jointly own, \$90,000, plus the value of the asset that your spouse separately owns, \$10,000, plus the value of the asset that you separately own, \$1,000. You and your spouse satisfy the reporting threshold of more than \$100,000 on the last day of the tax year.

**My spouse and I do not live abroad, file separate income tax returns, and jointly own a specified foreign financial asset valued at \$60,000 for the entire year.** Neither you nor your spouse has to file Form 8938. You each use one-half of the value of the asset, \$30,000, to determine the total value of specified foreign financial assets that you each own. Neither of you satisfies the reporting threshold of more than \$50,000 on the last day of the tax year or more than \$75,000 at any time during the tax year.

**My spouse and I file separate income tax returns, jointly and individually own specified foreign financial assets, and do not live abroad. On the last day of the tax year, my spouse and I jointly own a specified foreign financial asset with a value of \$90,000. My spouse has a separate interest in a specified foreign financial asset with a value of \$10,000. I have a separate interest in a specified foreign financial asset with a value of \$1,000.** You do not have to file Form 8938 but your spouse does. Your spouse has an interest in specified foreign financial assets in the amount of \$55,000 on the last day of the tax year. This is one-half of the value of the asset that you jointly own, \$45,000, plus the entire value of the asset that your spouse separately owns, \$10,000. You have an interest in specified foreign financial assets in the amount of \$46,000 on the last day of the tax year. This is one-half of the value of the asset that you jointly own, \$45,000, plus the entire value of the asset that you separately own, \$1,000. Your spouse satisfies the reporting threshold of more than \$50,000 on the last day of the tax year. You do not satisfy the reporting threshold of more than \$50,000 on the last day of the tax year or more than \$75,000 at any time during the tax year.

**My spouse and I are U.S. citizens but live abroad for the entire tax year and file a joint income tax return. The total value of our combined specified foreign financial assets on any day of the tax year is \$150,000.** You and your spouse do not have to file Form 8938. You do not satisfy the reporting threshold of more than \$400,000 on the last day of the tax year or more than \$600,000 at any time during the tax year for married individuals who live abroad and file a joint income tax return.

**My spouse and I live abroad and file separate income tax returns. My spouse is not a specified individual. On the last day of the tax year, my spouse and I jointly own a specified foreign financial asset with a value of \$150,000. My spouse has a separate interest in a specified foreign financial asset with a value of \$10,000. I have a separate interest in a specified foreign financial asset with a value of \$60,000.** You have to file Form 8938 but your spouse, who is not a specified individual, does not. You



have an interest in specified foreign financial assets in the amount of \$210,000 on the last day of the tax year. This is the entire value of the asset that you jointly own, \$150,000, plus the entire value of the asset that you separately own, \$60,000. You satisfy the reporting threshold for a married individual living abroad and filing a separate return of more than \$200,000 on the last day of the tax year.

### **Specified Foreign Financial Assets**

Specified foreign financial assets include the following assets.

1. Financial accounts maintained by a foreign financial institution.
2. The following foreign financial assets if they are held for investment and not held in an account maintained by a financial institution:
  - a. Stock or securities issued by someone that is not a U.S. person,
  - b. Any interest in a foreign entity, and
  - c. Any financial instrument or contract that has an issuer or counterparty that is not a U.S. person.

For foreign financial assets excepted from reporting, see *Exceptions to Reporting*, later.

**Foreign social security.** An interest in a social security, social insurance, or other similar program of a foreign government is not a specified foreign financial asset.

**Financial account.** A financial account is any depository or custodial account maintained by a foreign financial institution as well as any equity or debt interest in a foreign financial institution (other than interests that are regularly traded on an established securities market). A specified foreign financial asset includes a financial account maintained by a financial institution that is organized under the laws of a U.S. possession (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands).

**Foreign financial institution.** In most cases, a foreign financial institution is any financial institution that is not a U.S. entity and satisfies one or more of the following.

- It accepts deposits in the ordinary course of a banking or similar business.
- It holds financial assets for the account of others as a substantial part of its business.

- It is engaged (or holds itself out as being engaged) primarily in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, or any interest (including a futures or forward contract or option) in such securities, partnership interests, or commodities.

A foreign financial institution includes investment vehicles such as foreign mutual funds, foreign hedge funds, and foreign private equity funds.

**Other specified foreign financial assets.** Examples of other specified foreign financial assets include the following, if they are held for investment and not held in a financial account.

- Stock issued by a foreign corporation.
- A capital or profits interest in a foreign partnership.
- A note, bond, debenture, or other form of indebtedness issued by a foreign person.
- An interest in a foreign trust or foreign estate.
- An interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap, credit default swap, or similar agreement with a foreign counterparty.
- An option or other derivative instrument with respect to any of these examples or with respect to any currency or commodity that is entered into with a foreign counterparty or issuer.

**Assets held for investment.** You hold an asset, including a partnership interest, for investment if you do not use it in, or hold it for use in, the conduct of any trade or business.

Stock is not considered used or held for use in the conduct of a trade or business.

### **Interests in Specified Foreign Financial Assets**

You have an interest in a specified foreign financial asset if any income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the asset are or would be required to be reported, included, or otherwise reflected on your income tax return.

You have an interest in a specified foreign financial asset even if there are no income, gains, losses, deductions, credits, gross proceeds, or distributions from holding or disposing of the asset included or reflected on your income tax return for this tax year.

**Interests in assets held by disregarded entities.** If you are the owner of a disregarded entity, you have an interest in any specified foreign financial assets owned by the disregarded entity.

### **Interests in jointly owned assets.**

A joint owner of an asset has an interest in the entire asset. For special rules for interests in assets jointly owned by spouses, see *Joint interests in Determining the Total Value of Your Specified Foreign Financial Assets*, earlier, and *Reporting the value of jointly owned assets*, in *Reporting Maximum Value*, later.

**Interests in assets held in financial accounts.** If you have an interest in a financial account that holds specified foreign financial assets, you do not have to report the assets held in the account.

**Interests in assets generating certain unearned income of children.** If you file Form 8814, *Parents' Election To Report Child's Interest and Dividends*, with your income tax return to elect to include in your gross income certain unearned income of your child (the "kiddie tax" election), you have an interest in any specified foreign financial asset held by the child.

### **Interests in assets held by entities that are not disregarded entities.**

In most cases, you do not own an interest in any specified foreign financial asset held by a partnership, corporation, trust, or estate solely as a result of your status as a partner, shareholder, or beneficiary.

### **Interests in assets held by grantor trust.**

If you are considered the owner under the grantor trust rules of any part of a trust, you have an interest in any specified foreign financial asset held by that part of the trust you are considered to own. For exceptions from reporting for owners of certain domestic investment or bankruptcy trusts, see *Domestic investment trusts and Domestic bankruptcy trusts in Exceptions to Reporting*, later.

### **Interests in foreign estates and foreign trusts.**

An interest in a foreign trust or a foreign estate is not a specified foreign financial asset unless you know or have reason to know based on readily accessible information of the interest. If you receive a distribution from the foreign trust or foreign estate, you are considered to know of the interest.



**Interests in foreign pension plans and foreign deferred compensation plans.** Report in Part II your interest in the foreign pension plan or foreign deferred compensation plan. Do not separately report the assets held by the plan. See *Valuing interests in foreign estates, foreign pension plans, and foreign deferred compensation plans in Reporting Maximum Value*, later.

### Reporting Period

Unless an exception applies, the reporting period for Form 8938 is your tax year.

**Exception for partial tax years of specified individuals.** If you are a specified individual for less than the entire tax year, the reporting period is the part of the year that you are a specified individual.

**Example 1.** John is a calendar year taxpayer. The Form 8938 reporting period begins on January 1 and ends on December 31.

**Example 2.** Agnes was a single, calendar year taxpayer who died on March 6. The Form 8938 reporting period begins on January 1 and ends on March 6.

**Example 3.** George, a calendar year taxpayer, is not a U.S. citizen or married. George arrived in the United States on February 1 and satisfied the substantial presence test for the tax year. The Form 8938 reporting period begins on George's U.S. residency starting date, February 1, and ends on December 31.

### Reporting Maximum Value

You must report the maximum value during the tax year of each specified foreign financial asset reported on Form 8938. In most cases, the value of a specified foreign financial asset is its fair market value. An appraisal by a third party is not necessary to estimate the maximum fair market value during the year. See *Valuing financial accounts and Valuing other specified foreign financial assets*, later.

**Assets with no positive value.** If the maximum value of a specified foreign financial asset is less than zero, use a value of zero as the maximum value of the asset.

**Foreign currency conversion.** If your specified foreign financial asset is denominated in a foreign currency during the tax year, the maximum value of the asset must be determined in the foreign currency and then converted to U.S. dollars.

In most cases, you must use the U.S. Treasury Department's Financial Management Service foreign currency exchange rate for purchasing U.S. dollars. You can find this rate on [www.fms.treas.gov/intn.html](http://www.fms.treas.gov/intn.html). If no Financial Management Service exchange rate is available, you must use another publicly available foreign currency exchange rate for purchasing U.S. dollars and disclose the rate on Form 8938.

### Currency determination date.

Use the currency exchange rate on the last day of the tax year to figure the maximum value of a specified foreign financial asset or the value of a specified foreign financial asset for the purpose of determining the total value of your specified foreign financial assets to see whether you have met the reporting threshold. Use this rate even if you sold or otherwise disposed of the specified foreign financial asset before the last day of the tax year.

**Reporting the value of jointly owned assets.** If you own an asset jointly with one or more persons, you must report the asset's maximum value as follows.

**Married specified individuals filing a joint income tax return.** If you are married and you and your spouse file a joint income tax return, report any specified foreign financial asset that you jointly own only once and include the maximum value of the entire asset (and not just the maximum value of your interest in the asset). Also, you must report any specified foreign financial asset that either you or your spouse separately owns and include the maximum value of the entire asset. If you and your spouse file a joint income tax return that includes Form 8814, you must report any specified foreign financial asset your child owns only once and include the maximum value of the entire asset.

**Married specified individuals filing separate income tax returns.** If you are married and you and your spouse are specified individuals who file separate income tax returns, both you and your spouse report any specified foreign financial asset that you jointly own on your separate Forms 8938, and both you and your spouse must include the maximum value of the entire asset on your separate Forms 8938. You also must report any specified foreign financial asset that you own individually on your separate Form 8938 and include

the maximum value of the entire asset. If you file Form 8814, you must report any specified foreign financial asset your child owns and include the maximum value of the entire asset.

**Other joint ownership.** If you are a joint owner of a specified foreign financial asset and you cannot use one of the special rules for married individuals who file a joint tax return, you must report the specified foreign financial asset and include the maximum value of the entire asset.

**Valuing financial accounts.** You may rely on periodic account statements for the tax year to report a financial account's maximum value unless you know or have reason to know based on readily accessible information that the statements do not reflect a reasonable estimate of the maximum account value during the tax year.

**Valuing other specified foreign financial assets.** In most cases, you may use the value of a specified foreign financial asset, other than a financial account, as of the last day of the tax year, unless you know or have reason to know based on readily accessible information that the value does not reflect a reasonable estimate of the maximum value of the asset during the tax year.

**Example. I have publicly-traded foreign stock not held in a financial account that has a fair market value as of the last day of the tax year of \$100,000, although, based on daily price information that is readily available, the 52-week high trading price for the stock results in a maximum value of the stock during the tax year of \$150,000.** If you are required to file Form 8938, the maximum value of the foreign stock to be reported is \$150,000, based on readily available information of the stock's maximum value during the tax year.

**Valuing interests in foreign trusts.** If you are a beneficiary of a foreign trust, the maximum value of your interest in the trust is the sum of the following amounts.

- The value of all of the cash or other property distributed during the tax year from the trust to you as a beneficiary, and
- The value using the valuation tables under section 7520 of your right as a beneficiary to receive mandatory distributions as of the last day of the tax year.

**Valuing interests in foreign estates, foreign pension plans, and foreign deferred compensation plans.** If you have an interest in a foreign estate, foreign pension plan, or foreign deferred compensation plan, the maximum value of your interest is the fair market value of your beneficial interest in the assets of the estate, pension plan, or deferred compensation plan as of the last day of the tax year. If you do not know or have reason to know based on readily accessible information the fair market value as of the last day of the tax year, the maximum value is the fair market value, determined as of the last day of the tax year, of the cash and other property distributed during the tax year to you as a beneficiary or participant. If you received no distributions during the tax year and do not know or have reason to know based on readily accessible information the fair market value of your interest as of the last day of the tax year, use a value of zero as the maximum value of the asset.

### Exceptions to Reporting

You are not required to report a specified foreign financial asset if one of the following exceptions applies.

**Excepted financial accounts.** The following financial accounts and the assets held in such accounts are not specified foreign financial assets and do not have to be reported on Form 8938.

1. A financial account that is maintained by a U.S. payer, such as a domestic financial institution. In general, a U.S. payer also includes a domestic branch of a foreign bank or foreign insurance company and a foreign branch or foreign subsidiary of a U.S. financial institution.

2. A financial account that is maintained by a dealer or trader in securities or commodities if all of the holdings in the account are subject to the mark-to-market accounting rules for dealers in securities or an election under section 475(e) or (f) is made for all of the holdings in the account.

**Other excepted specified foreign financial assets.** You do not have to report any specified foreign financial asset that is not held in a financial account if the asset is subject to the mark-to-market accounting rules for dealers in securities or commodities or an election under section 475(e) or (f) is made for the asset.

**Duplicative reporting.** You do not have to report a specified foreign financial asset on Form 8938 if you report it on one or more of the following forms that you timely file with the IRS for the same tax year.

- Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
- Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
- Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
- Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships.
- Form 8891, U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans.

Instead, you must identify on Form 8938 the form(s) on which you report the specified foreign financial asset and how many of these forms you file. See *Part IV. Excepted Specified Foreign Financial Assets*, later.



*You must include the value of the assets reported on these forms in determining whether you satisfy the reporting threshold that applies to you. See Determining the Reporting Threshold That Applies to You, earlier.*

**Foreign grantor trusts.** If you are considered the owner under the grantor trust rules of any part of a foreign trust, you do not have to report any of the specified foreign financial assets held by the part of the trust you are considered to own if you satisfy the following conditions.

- You report the trust on a Form 3520 that you timely file with the IRS for the same tax year.
- The trust timely files Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner, with the IRS for the same tax year.

Instead, you must identify on Form 8938 how many of these forms you file. See *Part IV. Excepted Specified Foreign Financial Assets*, later.

**Domestic investment trusts.** If you are considered the owner under the grantor trust rules of any part of a domestic widely-held fixed investment trust under Regulations section 1.671-5, you do not have to report any specified foreign financial asset held by the part of the trust you are considered to own.

**Domestic bankruptcy trusts.** If you are considered the owner under the grantor trust rules of any part of a domestic liquidating trust under Regulations section 301.7701-4(d) that is created under chapter 7 or chapter 11 of the Bankruptcy Code, you do not have to report any specified foreign financial asset held by the part of the trust you are considered to own.

**Bona fide resident of a U.S. possession.** If you are a bona fide resident of a U.S. possession (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands) who is required to file Form 8938, you do not have to report the following specified foreign financial assets on Form 8938.

- A financial account maintained by a financial institution organized under the laws of the U.S. possession of which you are a bona fide resident.
- A financial account maintained by a branch of a financial institution not organized under the laws of the U.S. possession of which you are a bona fide resident, if the branch is subject to the same tax and information reporting requirements that apply to a financial institution organized under the laws of the U.S. possession.
- Stock or securities issued by an entity organized under the laws of the U.S. possession of which you are a bona fide resident.
- An interest in an entity organized under the laws of the U.S. possession of which you are a bona fide resident.
- A financial instrument or contract held for investment, provided each issuer or counterparty that is not a U.S. person is either an entity organized under the laws of the U.S. possession of which you are a bona fide resident or a bona fide resident of the U.S. possession of which you are a bona fide resident.

### Penalties

You may be subject to a penalty if you fail to file a correct Form 8938 on time or if you have an understatement of tax or omission of income relating to a specified foreign financial asset.

### Failure-to-File Penalty

If you are required to file Form 8938 but do not file a complete and correct Form 8938 by the due date (including extensions), you may be subject to a penalty of \$10,000.

**Continuing failure to file.** If you do not file a correct and complete Form 8938 within 90 days after the IRS mails you a notice of the failure to file,

you may be subject to an additional penalty of \$10,000 for each 30-day period (or part of a period) during which you continue to fail to file Form 8938 after the 90-day period has expired. The maximum additional penalty for a continuing failure to file Form 8938 is \$50,000.

**Married taxpayers filing a joint income tax return.** If you are married and you and your spouse file a joint income tax return, the failure to file penalties apply as if you and your spouse were a single person. You and your spouse's liability for all penalties is joint and several.

**Presumption of maximum value.** If the IRS determines that you have an interest in one or more specified foreign financial assets and asks you for information about the value of any asset, but you do not provide enough information for the IRS to determine the value of the asset, you are presumed to own specified foreign financial assets with a value of more than the reporting threshold that applies to you. See *Determining the Reporting Threshold That Applies to You*, earlier. In such case you are subject to the failure-to-file penalties if you do not file Form 8938.

**Reasonable cause exception.** No penalty will be imposed if you fail to file Form 8938 or to disclose one or more specified foreign financial assets on Form 8938 and the failure is due to reasonable cause and not to willful neglect. You must affirmatively show the facts that support a reasonable cause claim.

**Effect of foreign jurisdiction laws.** The fact that a foreign jurisdiction would impose a civil or criminal penalty on you if you disclose the required information is not reasonable cause.

### Accuracy-Related Penalty

If you underpay your tax as a result of a transaction involving an undisclosed specified foreign financial asset, you may have to pay a penalty equal to 40 percent of that underpayment.

**Examples.** Examples of underpayments due to transactions involving an undisclosed specified foreign financial asset include the following.

- You do not report ownership of shares in a foreign corporation on Form 8938 and you received taxable distributions from the company that you did not report on your income tax return.

- You do not report ownership of shares in a foreign company on Form 8938 and you sold the shares in the company for a gain and did not report the gain on your income tax return.
- You do not report a foreign pension on Form 8938 and you received a taxable distribution from the pension plan that you did not report on your income tax return.

### Fraud

If you underpay your tax due to fraud, you must pay a penalty of 75 percent of the underpayment due to fraud.

### Criminal Penalties

In addition to the penalties already discussed, if you fail to file Form 8938, fail to report an asset, or have an underpayment of tax, you may be subject to criminal penalties.

### Statute of Limitations

If you fail to file Form 8938 or fail to report a specified foreign financial asset that you are required to report, the statute of limitations for the tax year may remain open for all or a part of your income tax return until 3 years after the date on which you file Form 8938.

**Extended statute of limitations for failure to include income.** If you do not include in your gross income an amount relating to one or more specified foreign financial assets, and the amount you omit is more than \$5,000, any tax you owe for the tax year can be assessed at any time within 6 years after you filed your return.

For this purpose, specified foreign financial assets include any specified foreign financial assets in which you have an interest without regard to the reporting threshold that applies to you and regardless of any exception from reporting a specified foreign financial asset on Form 8938.

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## Specific Instructions

**Before you begin.** If you report all of your specified foreign financial assets on timely-filed Forms 3520, 3520-A, 5471, 8621, 8865, or 8891, you do not have to report them on Form 8938. Instead, enter your name, identifying number, and address at the top of the form, and complete Part IV only. Complete Part IV in addition to reporting your other specified foreign financial assets if you report only a part of your specified foreign financial assets on one or more of these forms.

**Additional sheets.** If you have more than one account or asset to report in Part I or II, or more than one issuer or counterparty to report in Part II, copy as many blank Parts I and/or II as you need to complete, and attach them to Form 8938. Check the "If you have attached additional sheets, check here" box at the top of the form.

## Identifying Information

Enter your name(s), identifying number, address, and tax year as shown on the annual return you are filing with Form 8938.

**TIP** *If you are a specified individual (see Specified individual, earlier) for less than the entire tax year, you only have to report the information for the part of the year that you are a specified individual.*

**Identifying number.** Enter the first social security number (SSN) or individual taxpayer identification number (ITIN) on your income tax return.

**Type of filer.** Check the box that shows the type of filer you are. If you are not a married individual filing a joint income tax return, check the "Other individual" box.

**Form 8938 for previously filed annual return.** Check this box if this Form 8938 is an original, amended, or supplemental Form 8938 that relates to a previously filed return.

If you are filing two Forms 8938 for the current tax year because you were eligible for the transitional rule for tax years beginning after March 18, 2010, check this box on the Form 8938 you are filing for the prior tax year. See *Transitional rule for 2011*, earlier, for more details.

### Part I. Foreign Deposit and Custodial Accounts

Use Part I to report information for foreign deposit and custodial accounts. If you have more than one account, attach a continuation sheet with the required information for each additional account and check the "If you have attached additional sheets, check here" box at the top of the form.

**Lines 1 through 9.** Enter the following information for each foreign deposit or custodial account.


**Line 1.** Check the box to indicate if this is a depository or a custodial account.

**Line 2.** Enter the account number of the account or other specific identifying information for the account if there is no account number.

**Line 3.** Check one or more boxes to indicate if any of the following applies.

- The account was opened during the tax year.
- The account was closed during the tax year.
- The account was jointly owned with your spouse.
- You did not report any tax item in Part III for this asset.

**Line 4.** Enter the maximum value of the account for the tax year.

 **Maximum value.** See Reporting Maximum Value, earlier, for information on determining the maximum value of the account.

**Joint interests.** Use the following rules to determine the maximum value to report.

**Spouses filing a joint return.** You and your spouse report the maximum value of a jointly held account only once on the single Form 8938 filed with your joint income tax return.


**Spouses filing separate returns.** You and your spouse each report the maximum value of a jointly held account on your separate Forms 8938 filed with your separate income tax returns.

**Other joint owners.** Report the maximum value of the entire jointly held account on your Form 8938 filed with your income tax return, regardless of the value of your separate interest in the account.

**Lines 5 and 6.** If you used a foreign currency exchange rate to convert the value of the account into U.S. dollars, check the "Yes" box on line 5 and go to line 6. Otherwise, check the "No" box and go to line 7.

**Line 6.** If you answered "Yes" on line 5, enter the following information.

1. The foreign currency in which the account is denominated.
2. The foreign currency exchange rate used to convert the value of the account into U.S. dollars.
3. If the U.S. Treasury Financial Management Service did not provide an exchange rate, the source of the foreign currency exchange rate that you used.

 **You must use the foreign currency exchange rate on the last day of the tax year, even if you closed or disposed of the**

*account before the last day of the tax year.*

**Lines 7 through 9.** Enter the name and mailing address of the financial institution in which you maintain this account.

## Part II. Other Foreign Assets

Use Part II to report information for specified foreign financial assets not held in a foreign financial account. If you have more than one asset, attach a continuation sheet with the same information for each additional asset and check the "If you have attached additional sheets, check here" box at the top of the form.

**Lines 1 through 8.** Enter the following information for all specified foreign financial assets not held in a foreign financial account. For examples of these foreign assets, see *Other specified foreign financial assets*, earlier.

**Line 1.** Enter a description of the asset. If the asset is stock or securities, include the class or issue of the stock or securities.

**Example 1.** You own 100 shares of XYZ Company, an Italian S.A. A sufficient description is "100 Class A shares of XYZ Company, S.A."


**Example 2.** You own a bond issued by AB GmbH, a German GmbH. A sufficient description is "Bond of AB GmbH, maturing on December 31, 2015."

**Line 2.** Enter the identifying number or other information identifying the asset.

**Line 3.** Enter the following information about the asset, if required.

1. If the asset was acquired or disposed of during the year, enter the date of acquisition and/or disposition.
2. If you own the asset jointly with your spouse, check the box on line 3c.
3. If you did not report any income, gain, loss, deduction, or credit for this asset on your tax return or any schedule or form attached to your income tax return filed for the tax year, check the box on line 3d.

**Line 4.** Check the box for the value range that represents the maximum value of the asset during the tax year. If the maximum value is more than \$200,000, enter the maximum value on line 4e.

 **Maximum value.** See Reporting Maximum Value, earlier, for information on determining the maximum value of the asset.

**Joint interests.** Use the following rules to figure the maximum value to report.

**Spouses filing a joint return.** You and your spouse report the maximum value of an asset held jointly by you and your spouse only once on the single Form 8938 filed with your joint income tax return.


**Spouses filing separate returns.** You and your spouse each report the maximum value of an asset held jointly by you and your spouse on your separate Forms 8938 filed with your separate income tax returns.

**Other joint owners.** Report the maximum value of the entire jointly held asset on your Form 8938 filed with your income tax return, regardless of the value of your separate interest in the asset.

**Lines 5 and 6.** If you used a foreign currency exchange rate to convert the value of the asset into U.S. dollars, check the "Yes" box on line 5 and go to line 6. Otherwise, check the "No" box and go to line 7.

**Line 6.** If you answered "Yes" to line 5, enter the following information.

1. The foreign currency in which the asset is denominated.
2. The foreign currency exchange rate used to convert the value of the asset into U.S. dollars.
3. If the U.S. Treasury Financial Management Service did not provide an exchange rate, the source of the foreign currency exchange rate that you used.

 **You must use the foreign currency exchange rate on the last day of the tax year, even if you sold or disposed of the asset before the last day of the tax year.**

**Lines 7a through 7e.** If the asset you reported on line 1 is stock of a foreign entity or an interest in a foreign entity, complete lines 7a through 7e.

**Line 7a.** Enter the name of the foreign entity.

**Line 7b.** Check the box on line 7b to indicate the type of foreign entity.

**Line 7c.** If the foreign entity is a passive foreign investment company, check the box on line 7c.

**Lines 7d and 7e.** Enter the mailing address of the foreign entity.

**Lines 8a through 8e.** If the asset you reported on line 1 is not stock of a foreign entity or an interest in a foreign entity, complete lines 8a through 8e.

**Note.** If this asset has more than one issuer or counterparty, copy page 2 as many times as you need to and complete a separate line 8 for each issuer or counterparty. Check the "If you have attached additional sheets, check here" box at the top of the form.

**Line 8a.** Enter the name of the issuer or counterparty and check the appropriate box to indicate if you are reporting for an issuer or a counterparty.

**Line 8b.** Check the appropriate box to indicate the type of issuer or counterparty.

**Line 8c.** Check the box to indicate if the issuer or counterparty is a U.S. person or a foreign person.

**Lines 8d and 8e.** Enter the mailing address of the issuer or counterparty. If the issuer or counterparty has a mailing address in the United States, you can enter the U.S. mailing address.

### **Part III. Summary of Tax Items Attributable to Specified Foreign Financial Assets**

Enter the following items for your total assets reported in Part I or Part II and the schedule, form, or return on which you reported the items.

- Interest.
- Dividends.
- Royalties.
- Gains or (losses).
- Deductions.
- Credits.

If you did not report any tax item for a specified foreign financial asset

on any form or schedule for the tax year, check the box in line 3d of Part I or Part II for the account or asset.

### **Part IV. Excepted Specified Foreign Financial Assets**

If you reported a specified foreign financial asset on certain other forms listed below for the same tax year, you may not have to report it on Form 8938. However, you must identify the form where you reported the asset and indicate how many forms you filed.

For more information, see *Duplicative reporting, earlier*. If you reported a specified foreign financial asset on one or more of the following forms, check the box(es) to identify the form(s) where you reported the asset and enter the number of forms filed.

- Form 3520.
- Form 3520-A.
- Form 5471.
- Form 8621.
- Form 8865.
- Form 8891.

**Form 8891.** If you filed Form 8891 to report an interest in a Canadian retirement plan, check the box for Form 3520 and enter how many Forms 8891 (and Forms 3520) you filed.

**Foreign grantor trusts.** If you are treated as an owner of any part of a foreign grantor trust, you may have to file Form 8938 to report specified foreign financial assets held by the trust. If you are a beneficiary of the foreign trust, you may have to file Form 8938 to report your interest in the trust. You do not have to report on Form 8938 any specified foreign financial asset held by the trust or

your interest in the trust if you report the trust on a Form 3520 you timely file for the tax year and the trust timely files Form 3520-A for the tax year.

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## **Paperwork Reduction Act Notice**

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We ask for the information on this form to carry out the Internal Revenue laws of the United States. Section 6038D requires specified individuals and, upon issuance of regulations, specified entities to report specified foreign financial assets in which they have an interest. Form 8938 is used to comply with this reporting requirement.

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

The time needed to complete and file the form will vary depending on individual circumstances. The estimated average time is: 1 hour and 5 minutes.

If you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.