



International Tax

United States Tax Alert

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PFIC Reporting Relief for Mark-to-Market Investments

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On September 10, 2014, the Treasury released Notice 2014-51 announcing intent to amend its regulations under section 1298(f) to provide relief for reporting on Form 8621 with respect to investments in a passive foreign investment company (PFIC) which is marked to market under any provision of the Internal Revenue Code.

On December 30, 2013, the Treasury released new temporary and proposed regulations (the Temporary Regulations) under the PFIC rules of Code sections 1291-1298, and withdrew corresponding portions of proposed regulations issued in 1992 (the 1992 Proposed Regulations). The main impact of the Temporary Regulations was to implement section 1298(f)'s requirement that a taxpayer file an annual report on Form 8621 with respect to an investment in a PFIC.

The Temporary Regulations generally impose Form 8621 reporting requirements on the lowest-tier U.S. person in cases where there are tiers of U.S. ownership in a PFIC. However, an upper-tier U.S. person is required to file Form 8621 in the event they are subject to tax under section 1291 on an excess distribution. Generally an upper-tier U.S. person is not required to make an annual filing with respect to a PFIC if the taxpayer is only subject to tax on the PFIC investment under the qualified electing fund (QEF) or section 1296 mark-to-market regimes.

Notice 2014-51 announces that Treasury has determined to extend the relief afforded for PFIC investments marked to market under section 1296 to PFIC investments marked to market under section 475(f) or other provisions of the Code, except if in the first year of the mark-to-market election the taxpayer's holding period includes a period during which the PFIC was not a QEF with respect to the taxpayer, or if the investment is not in fact marked to market (e.g., identified as held for investment or a hedge under section 475). The Notice provides that taxpayers may rely on it for taxable years ending on or after December 31, 2013.

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