

Tax News & Views Health Care Edition

Temporary regulations for PFIC reporting

On December 31, 2013, the Department of Treasury released new temporary and proposed regulations ([the Temporary Regulations](#)) under the passive foreign investment company (PFIC) rules of Internal Revenue Code (IRC) Sections 1291-1298. The main impact of the Temporary Regulations is 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 clarify that tax-exempt entities generally are not subject to the reporting requirements. The Temporary Regulations are effective for tax returns for taxable years ending on or after December 31, 2013.

Background

Section 521 of the Hiring Incentives to Restore Employment Act of 2010 added Section 1298(f) to the IRC, which instituted an annual Form 8621 reporting requirement for shareholders of PFIC stock that previously had no filing requirement. This requirement was originally effective as of March 18, 2010. The IRS issued Notice 2010-34 clarifying that this requirement would not be effective for any tax year beginning before March 18, 2010. Subsequently, the IRS issued Notice 2011-55 suspending the reporting requirement until the IRS issued a revised Form 8621.

Form 8621 filing requirement

Under the new Temporary Regulations, taxpayers will now be required to make an annual report on Form 8621 with respect to an investment in a PFIC at any time during the taxpayer's taxable year ending on or after December 31, 2013. A separate Form 8621 is required for each PFIC owned. The Temporary Regulations have relieved taxpayers from any filing requirements under Section 1298(f) for any taxable year ending on or before December 31, 2013.

Indirect owners

In addition to those taxpayers that directly own PFIC stock, certain indirect owners will also be required to file Form 8621. Generally, this requirement applies if the taxpayer owns PFIC stock indirectly by holding an interest in one or more foreign entities that own PFIC stock. Exceptions from filing apply for taxpayers owning an indirect interest in PFIC stock through domestic liquidating trusts, foreign pension funds, and as beneficiaries of foreign estates and trusts.

De Minimis exception

A taxpayer is not required to file Form 8621 for a PFIC under the Section 1298(f) requirement if either the total value of all PFIC stock owned directly or indirectly by the taxpayer is less than \$25,000 (\$50,000 for married filing jointly) or if the PFIC is owned indirectly and its value is less than \$5,000.

Exception for tax-exempt organizations

An exception from filing Form 8621 is established for tax-exempt entities that own PFIC stock, unless the entities would otherwise be taxable on income derived from the PFIC investment under subchapter F of Subtitle A of the IRC (such as unrelated business income). Specifically, this exception applies to an organization exempt under Section 501(a) and described in Section 501(c), 501(d) or 401(a), a state college or university described in Section 511(a)(2)(B), a plan described in Section 403(b) or 457(b), an individual retirement plan or annuity as defined in Section 7701(a)(37), or a qualified tuition program described in Section 529 or 530.

Form 990-T: 2013 significant changes

The Internal Revenue Service (IRS) has released the [2013 Form 990-T, Exempt Organization Business Income Tax Return](#), and instructions. The IRS updated the [instructions](#) to clarify certain reporting requirements.

Significant changes include:

- A discussion of the passive loss and at-risk limitations under Sections 469 and 465 pertinent to certain filers has been added under Part I (unrelated trade or business income) instructions.
- A discussion of the rules for recognition of gain or loss upon disposition of property received from a taxable subsidiary and used in unrelated business under Section 337 has been added under Line 4a (capital gain net income) instructions.
- Ordering rules for reporting of income reportable under more than one line item have been added to Line 5 (income or loss from partnerships and S corporations).
- Instructions have been added to Line 6 (rent income), Line 7 (unrelated debt-financed income), and Line 8 (interest, annuities, royalties, and rents from controlled organizations).



Find it Fast

[Temporary Regulations for PFIC reporting](#)

[Form 990-T: 2013 significant changes](#)

[Guidance on health insurance providers fee](#)

[Annual notification requirement for supporting organizations](#)

[Activities of taxable subsidiaries not attributed to HMO](#)

[Did you know?](#)

[Deloitte Thoughtware](#)

- Clarification that an organization need not file a Form 990-T in order to preserve a net operating loss (NOL) carryover has been added under Line 31 (NOL deduction).
- Information regarding electronic filing of FinCEN Form 114, *Report of Foreign Bank and Financial Accounts (FBAR)*, has been added under Part V, Line 1.

Guidance on health insurance providers fee

Section 9010 of the Patient Protection and Affordable Care Act (ACA) imposes an annual fee, beginning in 2014, on each covered entity engaged in the business of providing health insurance. A covered entity is any entity that provides health insurance for any U.S. health risk during the year, subject to certain exclusions. [Final regulations](#) on the health insurance provider fee were issued by the U.S. Treasury on November 26, 2013, and provide the method by which each covered entity's annual fee is calculated. IRS [Notice 2013-76](#) provides procedural guidance related to the reporting process.

Fee calculation

The ACA set the total annual fee on the health insurance industry at \$8 billion for 2014, increasing up to \$14.3 billion for 2018. The annual fee is not deductible for income tax purposes. The fee allocated to each covered entity is based on the entity's net premiums written in the preceding year divided by total net premiums written in the preceding year by all covered entities. Certain exclusions apply when calculating the covered entity's net premiums. The first \$25 million of net premiums written by each covered entity is not taken into account. Fifty percent of net premiums written are taken into account for amounts between \$25 million and \$50 million, and 100 percent of net premiums over \$50 million are taken into account. Excluded from the calculation are fifty percent of the remaining net premiums that are attributed to specific exempt activities of any covered entity that qualifies under Section 501(c)(3), (4), (26), or (29) and is exempt from tax under Section 501(a). However, the final regulations clarify that the exclusion is not extended to for-profit hospital health plans that are owned and controlled by entities exempt under Section 501(a) and described in Section 501(c).

Reporting and paying the fee

Each covered entity must file Form 8963, *Report of Health Insurance Provider Information*, to report its net premiums written for health insurance. The information submitted on original and corrected Forms 8963 is not confidential and will be open for public inspection or available upon request. The fee must be paid by electronic funds transfer; there is no tax return to be filed with the payment of the fee.

2014 — Important dates

April 15	Covered entity must file Form 8963
June 15	IRS mails each covered entity a notice of preliminary fee calculation
July 15	Covered entity reviews calculation and provides notice of any errors by filing a new, corrected Form 8963
Aug 31	IRS notifies each covered entity of final fee calculation
Sept 30	Payment of the fee is due

Annual notification requirement for supporting organizations

As a reminder, effective as of December 28, 2012, all Type III supporting organizations must meet an annual notification requirement, which includes a written notice addressed to a principal officer of the supported organization. The written notice must describe the type and amount of all support provided to the supported organization during the tax year. A copy of the supporting organization's most recently filed Form 990 and governing documents must be attached to the notice. The annual notification must be provided by the last day of the fifth month following the end of the taxable year. For 2013 calendar year-end organizations, the due date for the notice is May 31, 2014. If the 2013 Form 990 has not been filed by May 31, 2014, then a copy of the 2012 Form 990 may be provided with the notice. For additional information, refer to the regulations published under IRC Section 509(a)(3).

Activities of taxable subsidiaries not attributed to HMO

[PLR 201406019](#) addresses whether the activities of two taxable subsidiaries of a tax-exempt health maintenance organization (HMO) will be attributed to the HMO for the purposes of continued qualification for exempt status or liability for unrelated business income tax.

The HMO is a nonprofit corporation that is exempt from federal income taxation under Section 501(a) as an organization described in Section 501(c)(4). The HMO provides healthcare and healthcare-related services, in particular to individuals who qualify for Medicaid, CHP, and Medicare Advantage. As part of a reorganization, the HMO created two taxable subsidiary corporations.

The first subsidiary provides insurance products. It issued three classes of stock, some of which is owned by the HMO. The second subsidiary provides administrative services to the HMO and the first subsidiary. Payments for such administrative services are intended to reflect the reasonable fair market value of those services according to an arms-length standard. The second subsidiary issued two classes of stock, some of which is owned by the HMO. While the HMO's officers, directors, and key employees may serve on each subsidiary's board of directors, they may not comprise the majority of either subsidiary's board.

The IRS held that both subsidiaries are separately incorporated entities and their separate existence should be respected for tax purposes. In its analysis, the IRS cited *Britt v. U.S.*, 431 F.2d 227 (5th Cir. 1970) and *Moline Properties v. Commissioner*, 319 U.S. 436, 63 S.Ct. 1132 (1943), in which the courts held that as a general rule for federal income tax purposes, a parent and its subsidiary corporations are separate taxable entities so long as the purposes for which the subsidiary is formed are the equivalent of business activities. The IRS determined that both subsidiaries had their own business purposes that were separate and distinct from the HMO's purpose of providing healthcare services. In addition, the IRS stated that while the HMO and the subsidiaries are related, the subsidiaries possess materially different governance structures and the HMO may not control a majority of the boards.

The IRS also stated that because the subsidiaries will be treated as separate taxpayers, they will report their items of income and expense on their respective corporate tax returns. Consequently, neither the activities of the subsidiaries nor the gross income derived from those activities will be attributed to the HMO as unrelated business income.

Did you know?

Supreme Court hears oral arguments in *United States v. Quality Stores*

On January 14, 2014, the Supreme Court heard oral arguments in *United States v. Quality Stores* (Supreme Court Docket No. 12-1408) and is due to decide whether severance payments made to employees whose employment was involuntarily terminated are taxable under the Federal Insurance Contributions Act.

Interactive Form 1023

The IRS has updated its [interactive Form 1023](#) to include additional explanations and pop-up information boxes for most lines of the form. The interactive application became available at the end of December 2013. Once completed, applicants print and mail the form and attachments to the IRS, just like the standard Form 1023.

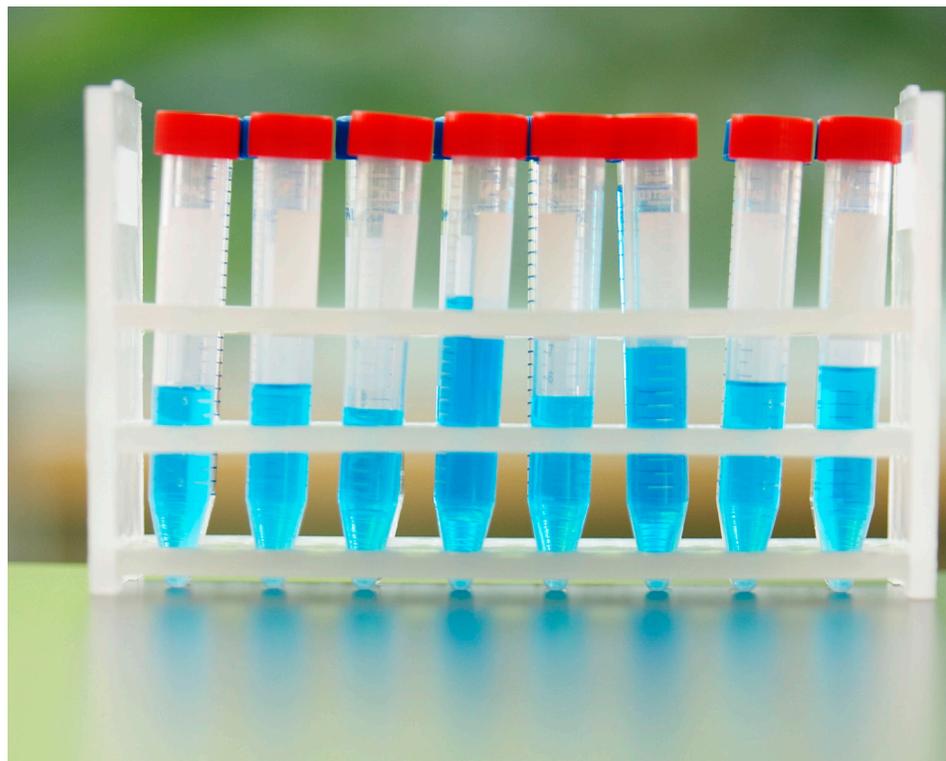
New form to report foreign bank and financial accounts

Effective October 1, 2013, a new form, FinCEN Form 114, *Report of Foreign Bank and Financial Accounts (FBAR)*, replaced Form TD F 90-22.1. FBARs for calendar year 2013 and thereafter, and any amended or delinquent FBARs filed after July 1, 2013, are required to be electronically filed. The FinCEN BSA E-Filing System site can be used to e-file the form. FBARs for calendar year 2013 are due by June 30, 2014.

Deloitte Thoughtware

Health Reform. The health reform bills (HR3590 and HR4872) are now law and will trigger sweeping changes and disruptions — some rather quickly and some over many years. The industry is asking, “What now?” At Deloitte, we continue to explore and debate the specific questions facing the industry, and we look forward to helping our clients find and implement the appropriate answers for their organizations. To learn more, visit [Health Care Solutions](#) on the Deloitte website.

Health Care Regulation. With quality in the spotlight on a national level, hospitals across the country are renewing their commitment to confirming that their services meet the core measures for quality set by the government and that internal controls are in place to help determine that the collection and reporting of quality data is accurate, complete, and compliant with government reporting requirements. The financial and operational impacts of regulation and legislative oversight in the life sciences and health care industries are pervasive and constantly changing. [@Regulatory](#) is a monthly publication that apprises readers of the latest regulatory, legislative, and other public policy developments affecting life sciences and health care organizations. Visit [@Regulatory](#) on the Deloitte website.



As used in this document, “Deloitte” means Deloitte Tax LLP, a subsidiary of Deloitte LLP. Please see www.deloitte.com/us/about for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Deloitte Dbriefs

Deloitte Dbriefs are live webcasts that give you valuable insights on important developments affecting your business. Register for the following webcasts or view archived recordings by clicking on the respective hyperlinked button below.



Financial Executives

Supply Chain Forensics: Identify Fraud, Waste, and Abuse in Your Organization February 26, 2:00 PM ET

For many companies, the supply chain represents both the largest source of cash outflows and interaction with outside business entities, so it can harbor many fraud, waste, and abuse-related risks. How can you leverage data analytics and forensic accounting to combat these risks? We'll discuss:

- Developing tailored criteria-based processes to help evaluate the relative risk value of your vendor relationships.
- Detecting and mitigating potentially costly risks, while also identifying opportunities to boost the organization's bottom line.
- Identifying and eliminating fraud, waste, and abuse perpetrated by your employees or your company's vendors.

Learn how leading companies employ supply chain forensics to mitigate risk and increase shareholder value.

[Register or View Archive](#)

The Real Deal with Big Data: What Are the Right Analytics? February 27, 2:00 PM ET

Executive teams face myriad opportunities and risks surrounding big data. Boards and financial executives should understand what big data is, why it matters, and where high-value applications of analytics may be found. Are our board and management team making the most out of big data? We'll discuss:

- A practical and useful definition of big data and associated opportunities and challenges.
- A process to help management focus on strategic analytics for risk management purposes.
- Considerations for leveraging analytics to help guide management toward high-return activities.

Learn how strategic analytics, applied to big data, can help detect opportunities and risks for your business.

[Register or View Archive](#)

Analytics Trends: What Does the Future Hold for CFOs? March 19, 3:00 PM ET

With analytics already an important tool for many companies, what's next? How can CFOs use analytics to create new competitive advantage and enterprise value? We'll discuss:

- Current power users of analytics, including finance, marketing, and sales functions, and how CFOs can leverage the results.
- Emerging opportunities for analytics, including accessing new data sources, more advanced technology, and ways CFOs can influence and support decision-making across the business.
- Common barriers to widespread adoption, including data quality, IT infrastructure, alignment between initiatives, and skill sets.

Hear results of the Deloitte Analytics Advantage survey to learn about analytics trends and valuable insights to help guide CFOs next year.

[Register or View Archive](#)

Getting Smart About Smartphone Technology March 26, 2:00 PM ET

With the growing popularity of bring your own device policies, smartphones now provide millions of employees with real-time access to both business and personal information. To mitigate risk and facilitate digital compliance, organizations should know what type of business information resides on employee smartphones and ways to preserve smartphone data for litigation, regulatory, or investigation matters. We'll discuss:

- Differences between data preservation on smartphones and computers and the impact this can have on organizations.
- Applications that may pose a data security risk to your organization.
- Potential challenges of smartphone data preservation.

Gain insights on how to protect your organization better in a world of changing technology.

[Register or View Archive](#)



Industries

Health Care Technology Trends: Welcome to the Future March 11, 1:00 PM ET

The health care industry is likely to be in a state of flux responding to the democratization of medical knowledge, the consumerization of health care, and big data's impacts. What do these changes mean for health care stakeholders?

We'll discuss:

- Emerging technology trends changing how the health care system operates and delivers care, including mHealth, analytics, and new care settings.
- Implications for the industry, including security and privacy, mobile device management, and new solutions to old problems.
- How the health care industry can capitalize on these emerging trends.

Explore technology innovations from Deloitte's annual Technology Trends report that could transform health care and ultimately improve consumers' health.

[Register or View Archive](#)

Succession Management: Building Your Organization's Bench Strength March 18, 2:00 PM ET

By 2016 an estimated one-third of the federal workforce, including many in the Senior Executive Service, will be eligible for retirement. With similar estimates for state and local governments, the public sector faces a looming talent challenge. Are you ready? We'll discuss:

- Key elements and guiding principles of succession management.
- A six-step process that can help build your agency's bench strength.
- How immersive learning techniques can help develop the next generation of leaders, and how some agencies have begun to reap rewards from their cohesive pipeline-development strategies.

Learn about pitfalls that can limit the potential of your talent development program and drivers that can improve it.

[Register or View Archive](#)



HR Executives

High-Impact HR: What's Holding Organizations Back? March 12, 2:00 PM ET

Organizations have transformed their HR functions for years to be more strategic partners to business units. So why haven't more HR organizations achieved true, high-impact HR? We'll discuss:

- Drivers of high-impact HR, including globalization, diversification of business strategies, and the war for top talent.
- Considerations for effective HR transformation, including HR's role as business partner, the value of analytics and internal and external data, and establishing the case for change.
- HR structures that help drive and maintain business alignment.
- Five emerging trends that may constitute the next wave of HR transformation.

Hear results of research from Bersin by Deloitte to learn how companies are achieving high-impact HR.

[Register or View Archive](#)

Contacts

Please contact your local Deloitte Tax LLP provider for more information on our services.

Fran Bedard — Nashville

fbedard@deloitte.com

+1 615 259 1811

Lori Boyce — Detroit

lboyce@deloitte.com

+1 313 396 3324

Jeff Frank — Indianapolis

jdf Frank@deloitte.com

+1 317 656 6921

Margaret Grinnell — Chicago

mgrinnell@deloitte.com

+1 312 486 9025

William Homer — Philadelphia

whomer@deloitte.com

+1 215 299 4642

Christine Kawecki — Jericho

ckawecki@deloitte.com

+1 516 918 7138

Tom Kromer — Columbus

tkromer@deloitte.com

+1 614 229 4705

Frank Neczypor — Boston

fneczypor@deloitte.com

+1 617 437 2728

Diana McCutchen — Costa Mesa

djmcutchen@deloitte.com

+1 714 436 7702

Mary Rauschenberg — Chicago and Washington National Tax

mrauschenberg@deloitte.com

+1 312 486 9544

Steve Rovner — Tampa

srovner@deloitte.com

+1 813 273 8355

John W. Sadoff, Jr. — Atlanta

jsadoff@deloitte.com

+1 404 220 1352

Jim Sowar — Cincinnati

jsowar@deloitte.com

+1 513 784 7242

Mike Walton — San Francisco

mwalton@deloitte.com

+1 415 783 6424

Yvette Woods — McLean

ywoods@deloitte.com

+1 703 251 1420

Sharon Zorbach — San Jose

szorbach@deloitte.com

+1 408 704 2063

The information contained in Tax News & Views: Health Care Edition is for general purposes only and Deloitte is not, by means of this newsletter, rendering accounting, business, financial investment, legal, tax, or other professional advice or services. This material is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional adviser. Deloitte shall not be responsible for any loss sustained by any person who relies on this newsletter. If you have questions about the content of Tax News & Views: Health Care Edition, contact Mary Rauschenberg at +1 312 486 9544 or at mrauschenberg@deloitte.com.

Copyright © 2014 Deloitte Development LLC. All rights reserved.

Member of Deloitte Touche Tohmatsu Limited