

Section 1298(f) Reporting Requirements for U.S. Persons that Hold Stock of a Passive Foreign Investment Company that is Marked to Market Under Section 475 or Another Chapter 1 Code Provision Other Than Section 1296

Notice 2014-51

SECTION 1. PURPOSE

This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) will amend the regulations under section 1298(f) of the Internal Revenue Code (Code) to provide guidance concerning United States persons (U.S. persons) that hold stock of a passive foreign investment company within the meaning of section 1297(a) (PFIC) that is marked to market under section 475 or another chapter 1 Code provision other than section 1296.

SECTION 2. BACKGROUND

.01 Sections 1291 Through 1298

Sections 1291 through 1298 set forth three tax regimes for shareholders that own stock of a PFIC: (i) the excess distribution rules under section 1291; (ii) the qualified electing fund (QEF) rules under section 1293; and (iii) the mark to market rules under section 1296, which apply when an election under section 1296(k) is in effect.

Section 1298(f) provides that, except as otherwise provided by the Secretary, a U.S. person that is a shareholder of a PFIC must file an annual report containing the information required by the Secretary. Section 1.1298-1T sets forth the annual information reporting requirements for PFIC shareholders. Annual information reports of PFIC shareholders are provided on Form 8621, "Information Return by a Shareholder

of a Passive Foreign Investment Company or Qualified Electing Fund.” Under section 6501(c)(8), the period of limitation for assessment of tax with respect to periods for which reporting is required under section 1298(f) will not expire before three years after the date on which the IRS receives Form 8621 for the taxable year.

.02 PFIC Stock Marked to Market Under Section 475 or Another Chapter 1 Code Provision Other than Section 1296

Section 1291(d)(1) provides that, subject to the coordination rules provided in section 1296(j), section 1291 does not apply if an election under section 1296(k) is in effect for the taxpayer’s taxable year. Section 1291(d)(1) further provides that, subject to coordination rules similar to the rules of section 1296(j), section 1291 also does not apply in the case of PFIC stock that is marked to market under any other provision of chapter 1 of the Code (a non-section 1296 MTM regime), including section 475. The regulations under section 1291 incorporate these rules, provide guidance on the coordination rules, and clarify that the section 1291(d)(1) rule applies with respect to a non-section 1296 MTM regime regardless of whether the applicable mark to market regime is mandatory or elective. §1.1291-1(c)(4). The coordination rule relevant to a non-section 1296 MTM regime applies to the first taxable year in which a U.S. person marks to market the PFIC stock if, during the U.S. person’s holding period (as defined in section 1291(a)(3)(A) and §1.1296-1(f)), the foreign corporation was a PFIC for any taxable year prior to such first taxable year and the corporation was not treated as a QEF with respect to the U.S. person. Section 1291(d)(1) and §1.1291-1(c)(4)(ii). Subject to this coordination rule, U.S. persons that hold PFIC stock that has been

marked to market under a non-section 1296 MTM regime are not subject to tax under any of the PFIC regimes. See also §§1.1295-1(i)(3) and 1.1296-1(h)(3).

For example, in cases in which a U.S. person properly marks to market under section 475 its PFIC stock in the first year and each succeeding year that it holds the stock, the U.S. person will not be subject to any of the PFIC regimes with respect to the stock. Rather, the U.S. person will be required to report any gain with respect to the PFIC stock under the rules of section 475. However, a U.S. person that is subject to section 475 (either because the U.S. person is a dealer in securities under section 475 or has made a valid and timely election under section 475(f)) may not be required under section 475 to mark to market certain stock, such as stock that it holds for investment or as a hedge. See section 475(b)(1)(A) and (C). A U.S. person will be subject to tax under the PFIC regimes with respect to any PFIC stock that is not marked to market under a non-section 1296 MTM regime.

.03 Section 1298(f) Information Reporting Regulations

On December 31, 2013, the Treasury Department and the IRS published temporary and proposed regulations under sections 1291 and 1298 (2014-3 I.R.B. 394), which included guidance under section 1298(f) on the annual filing requirements for shareholders of PFICs. §1.1298-1T. The regulations generally are effective for taxable years of shareholders ending on or after December 31, 2013. §1.1298-1T(h).

Under §1.1298-1T(b), a U.S. person that directly owns stock in a PFIC or that is an indirect shareholder of a PFIC generally is required to file a Form 8621. Section 1.1298-1T(b) provides certain exceptions from the information reporting requirements, including an exception that can apply when the aggregate value of PFIC stock held by a

shareholder is less than a specified threshold. §§1.1298-1T(c)(2)(i)(A)(1) and 1.1298-1T(c)(2)(iii).

The §1.1298-1T regulations do not provide an exception from the information reporting requirements for shareholders of PFIC stock that is marked to market under a non-section 1296 MTM regime. Thus, a U.S. person that owns PFIC stock that is marked to market under a non-section 1296 MTM regime is subject to the generally applicable rules in §1.1298-1T that apply to direct and indirect shareholders that own PFIC stock.

SECTION 3. SECTION 1298(f) INFORMATION REPORTING FOR U.S. PERSONS THAT OWN AN INTEREST IN A PFIC THAT IS MARKED TO MARKET UNDER A NON-SECTION 1296 MTM REGIME

The Treasury Department and the IRS have determined that a U.S. person that holds PFIC stock that is marked to market under a non-section 1296 MTM regime generally should not be subject to the reporting requirements of §1.1298-1T with respect to that stock. Accordingly, the Treasury Department and the IRS will amend §1.1298-1T to provide an exception from the reporting requirements of §1.1298-1T for a U.S. person with respect to PFIC stock that is marked to market under a non-section 1296 MTM regime, except that the exception will not be available for a taxable year in which the U.S. person is required to apply the rules of section 1291 with respect to the PFIC stock pursuant to the coordination rules in §1.1291-1(c)(4)(ii). The exception from the reporting requirements of §1.1298-1T will not be available to the extent PFIC stock held by a U.S. person is not in fact marked to market for any reason, including, for example, because it is treated as held for investment or as a hedge under section 475. In addition, the regulations will be revised to provide that a shareholder that is not

subject to section 1298(f) information reporting with respect to PFIC stock that is marked to market under a non-section 1296 MTM regime is not required to take the value of the stock into account for purposes of determining whether it exceeds the relevant threshold under §1.1298-1T(c)(2)(i)(A)(1) or §1.1298-1T(c)(2)(iii).

If a U.S. person is not subject to the reporting requirements of section 1298(f) with respect to PFIC stock for a taxable year pursuant to the regulations, the failure to furnish Form 8621 with respect to the PFIC stock does not result in the extension of the period of limitation for the taxable year under section 6501(c)(8). Accordingly, the IRS will not assert that the period of limitation is extended for any taxable year of any shareholder of PFIC stock that appropriately relies on the rules described in this notice prior to the issuance of final regulations.

SECTION 4. EFFECTIVE DATE

Shareholders may rely on the rules described in Section 3 of this notice for their taxable years ending on or after December 31, 2013. The provisions of the future final regulations incorporating the guidance described in Section 3 of this notice will be effective for taxable years of shareholders ending on or after December 31, 2013.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Rose E. Jenkins of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Rose E. Jenkins at (202) 317-6934 (not a toll-free call).