



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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Dear \_\_\_\_\_ :

This letter responds to a letter from your authorized representative dated October 29, 2009, as well as subsequent correspondence, requesting information concerning the stock ownership rules under the passive foreign investment company (PFIC) provisions of §§ 1291-1298 of the Internal Revenue Code (the Code).

Generally, a U.S. person that directly or indirectly owns an equity interest in a PFIC is subject to the provisions of §§ 1291-1298. See Treas. Reg. § 1.1291-9(j)(3) and Prop. Reg. § 1.1291-1(b)(7) and (8). The proposed regulations under § 1291 indicate that a person's ownership of PFIC stock is determined on the basis of all the facts and circumstances in each case. The proposed regulations also reference Treas. Reg. § 1.958-1(c)(2), which generally provides for ownership interests in a foreign corporation to be determined on the basis of all of the facts and circumstances, with particular emphasis on the person's interest in the income of the corporation and the amount of voting power in the corporation.

In general, a U.S. person should analyze all of the facts and circumstances under the general rules of tax ownership to determine whether they have an equity interest in a PFIC and thus are considered a PFIC shareholder for purposes of §§ 1291-1298. Tax ownership of stock lies with the holder of the majority of the benefits and burdens of the stock. Some factors that will inform a determination of tax ownership of PFIC stock include, but are not limited to, a person's right to vote or otherwise control the stock, the right to share in the income of the corporation, the risk of loss and opportunity for gain in the stock, and the right to alienate the stock. Although relevant, bare legal title is not determinative. See, e.g., *Christoffersen v. United States*, 749 F.2d 513 (8th Cir. 1984); *Anschutz v. Commissioner*, 135 T.C. No. 5 (July 22, 2010); *Calloway v. Commissioner*, 135 T.C. No.3 (July 8, 2010); *Grodt & McKay Realty, Inc. v. Commissioner*, 77 T.C. 1221 (1981).

Please call \_\_\_\_\_ at \_\_\_\_\_ with any questions.

Sincerely,

Jeffery G. Mitchell  
Branch Chief  
Associate Chief Counsel (International)

cc: