

## **SUPPORTING STATEMENT**

### **1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Sections 1291-1297 of the Internal Revenue Code of 1986 provide special rules for the taxation of shareholders of passive foreign investment companies (PFICs). Section 1295 of the Code permits a shareholder to elect to treat a PFIC as a qualified electing fund (QEF) to include a pro rata share of the QEF's annual earnings in income under section 1293. The shareholder may make the section 1295 election for any taxable year provided the shareholder makes the election by the due date, as extended under section 6081, for the return for the taxable year (election due date). Section 1295(b)(2), however, permits a shareholder to make a section 1295 election, as provided in regulations, for a taxable year after the election due date (retroactive election) if the shareholder reasonably believed that the foreign corporation was not a PFIC in its taxable year ended during the shareholder's taxable year, or the Commissioner consents to a retroactive election. The section 1295 election is revocable only with the consent of the Commissioner. The regulations provide the rules for making, maintaining, and terminating, invalidating, or revoking a section 1295 election. The regulations also provide the exclusive rules for making a retroactive election.

### **2. USE OF DATA**

The recordkeeping and reporting requirements enable the Internal Revenue Service to identify those U.S. taxpayers that are treating their PFICs as QEFs; to verify that those U.S. taxpayers are currently including their shares of QEF earnings in income, as required in section 1293 of the Internal Revenue Code; to be informed of those QEF shareholders who are not paying their section 1293 tax liability because they made the section 1294 election to defer the time for payment; to identify those shareholders of foreign corporations that are preserving their right to make a retroactive section 1295 election; to identify those shareholders making retroactive elections and verify that they are satisfying the requirements of a retroactive

election; and, in the case of shareholders that have entered into Protective Statements, the dates by which the shareholders' extensions of periods of limitations will terminate.

3. **USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

We have no plans to offer electronic filing because of low filing volume compared to cost of electronic enabling.

4. **EFFORTS TO IDENTIFY DUPLICATION**

We have attempted to eliminate duplication within the agency wherever possible.

5. **METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

Section 1.1295-1 reduces the burden for making the section 1295 election for all taxpayers, including small businesses and other small entities. Unlike the current requirements, the regulations eliminate the shareholder election statement, and only require shareholders to retain the PFIC Annual Information Statement. In addition, §1.1295-3 of the regulations imposes a lesser burden on small businesses preserving their right to make retroactive elections. A small entity that owns less than 5 percent of each class of stock of a foreign corporation and satisfies other requirements is not required to file a Protective Statement to preserve its rights to make a retroactive election with respect to the foreign corporation. In addition, a small entity potentially has fewer amended returns to file to make a retroactive election than a shareholder that filed a Protective Statement. Where applicable, the small entity will be treated as a pedigreed QEF shareholder notwithstanding closed taxable years in its holding period during which the foreign corporation was a PFIC, but not a QEF.

6. **CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**

Not applicable.

7. **SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE**

**INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)**

Not applicable.

**8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS**

A notice of proposed rulemaking (63 FR 39) was published simultaneously with temporary regulations (63 FR 6) in the Federal Register on January 2, 1998. No public hearing was requested or held. The final regulations were published in the Federal Register on February 7, 2000 (65 FR 5777).

In response to the Federal Register Noticed dated March 19, 2013 (78 FR 16916), we received no comments during the comment period regarding REG-115795-97.

**9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

Not applicable.

**10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

**11. JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

**12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

Sections 1.1295-1(f) and (g) of the regulation provide the manner for making the section 1295 election and the annual election requirements. Except for the requirements noted below, these requirements are provided in Form 8621. Therefore, the burden for those requirements for making the section 1295 election is already reflected in the burden of Form 8621.

Section 1.1295-1(f)(1)(iii) of the regulation requires a shareholder that has calculated the QEF's ordinary earnings and net capital gain, rather than the QEF, to attach a

statement to Form 8621 to that effect. We estimate that 20 shareholders will be required to file that statement and that each shareholder will take .1 hour to prepare the statement, for a total burden of two hours.

Section 1.1295-1(f)(2)(i)(B)(3) of the regulation requires the QEF whose shareholder has calculated the ordinary earnings and net capital gain of the QEF to include a statement in its annual information statement that indicates that the QEF has permitted the shareholder to examine its books and records for purposes of the calculation. We estimate that there are 10 QEFs required to make that statement and that each QEF will take .1 hour to prepare the statement, for a total burden of 1 hour.

Section 1.1295-1(g)(3) of the regulation requires a shareholder that has made the section 1295 election to store certain documents. We estimate that it will take each of the 1,000 shareholders that make the section 1295 election .1 hour to collect and store the required records, for a total burden of 100 hours.

Section 1.1295-1(h)(2)(ii) of the regulation requires a shareholder to file a request for a private letter ruling to obtain consent to revoke its section 1295 election. It is estimated that 10 shareholders will request consent to revoke their section 1295 elections and that each shareholder will take two hours to prepare the request for ruling, for a total burden of 20 hours.

Section 1.1295-3(c) of the regulation provides that a shareholder of a foreign corporation preserves the right to make a retroactive election under section 1295 by filing a Protective Statement. We estimate that 100 shareholders will file Protective Statements, and that each shareholder will take one hour to prepare and execute the Protective Statement, which includes the waiver of the periods of limitations and reasonable belief statement. The total estimated burden therefore is 100 hours.

Section 1.1295-3(f) of the regulation permits a shareholder to request the Commissioner's consent to make a retroactive election if the shareholder failed to make a section 1295 election or file a Protective Statement by the election due date because the shareholder reasonably relied on a

qualified tax professional who failed to identify the foreign corporation as a PFIC or failed to advise the shareholder to make the section 1295 election. It is estimated that 100 shareholders will request consent to make a retroactive section 1295 election and that the per shareholder burden to prepare the request for consent and the required attachments will vary from two to four hours, depending on individual circumstances, with an estimated average of three hours. The total estimated average burden is 300 hours.

Section 1.1295-3(g) of the regulation provides the rules for making a retroactive election. We estimate that 50 of the 200 shareholders that file Protective Statements or request consent to make retroactive elections will actually make retroactive elections. We also estimate that the per shareholder burden to make the retroactive election and comply with the requirement to file amended returns for all the affected years will vary from one to three hours, depending on individual circumstances, with an estimated average of two hours. The total estimated average burden is 100 hours.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

**13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

As suggested by OMB, our **Federal Register** notice dated March 19, 2013, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

**14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

Not applicable.

**15. REASONS FOR CHANGE IN BURDEN**

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

**16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION**

Not applicable.

**17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE**

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I**

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.