

# K-1 Footnote Disclosures: International Tax Implications

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## Learning Objectives

At the end of the presentation you should be able to:

- Identify some of the more common K-1 footnotes related to international tax
- Determine whether additional international tax reporting or filing requirements are necessary



## Common International K-1 Footnotes

- Effectively Connected Income (ECI)
- Transfers of Property to Foreign Corporations (Form 926)
- Investment in Foreign Corporations (Form 5471)
- Investment in Foreign Partnerships (Form 8865)
- Foreign Tax Credit (FTC) (Form 1116)
- Specified Foreign Financial Assets (Form 8938)
- Passive Foreign Investment Company (PFIC) (Form 8621)
- Global Intangible Low-Taxed Income (GILTI), IRC Section 951A
- Deemed Repatriation, IRC Section 965
- Other International Forms and Considerations



## Effectively Connected Income (ECI)

When a foreign person engages in a trade or business in the U.S., all income from sources within the U.S. connected with the conduct of that trade or business is considered ECI

If the partnership is engaged in a US trade or business at any time during the tax year, the partner is considered to be engaged in a US trade or business



## International K-1 Footnotes (ECI)

### EFFECTIVELY CONNECTED INCOME (ECI)

YOUR SHARE OF THE FOLLOWING LINE ITEMS INCLUDED ON SCHEDULE K-1, IS CONSIDERED EFFECTIVELY CONNECTED INCOME/(LOSS):

|                         |        |
|-------------------------|--------|
| SCHEDULE K-1, LINE 1:   | 9,822  |
| SCHEDULE K-1, LINE 2:   | (8)    |
| SCHEDULE K-1, LINE 5:   | 3      |
| SCHEDULE K-1, LINE 7:   | 1      |
| SCHEDULE K-1, LINE 9A:  | 12,932 |
| SCHEDULE K-1, LINE 10:  | 2,072  |
| SCHEDULE K-1, LINE 13A: | 4      |
| SCHEDULE K-1, LINE 13H: | -      |
| SCHEDULE K-1, LINE 13J: | -      |
| SCHEDULE K-1, LINE 13K: | 1      |
| SCHEDULE K-1, LINE 13W: | 147    |

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## International K-1 Footnotes (ECI)

|  |   |                                  |
|--|---|----------------------------------|
| Form <b>1040NR</b><br>Department of the Treasury<br>Internal Revenue Service | <b>U.S. Nonresident Alien Income Tax Return</b><br>Go to <a href="http://www.irs.gov/Form1040NR">www.irs.gov/Form1040NR</a> for instructions and the latest information.<br>For the year January 1–December 31, 2018, or other tax year beginning , 2018, and ending , 20 | OMB No. 1545-0074<br><b>2018</b> |
|--|---|----------------------------------|

|   |     |  |     |
|---|-----|--|-----|
| <b>Income Effectively Connected With U.S. Trade/ Business</b>   | 8   | Wages, salaries, tips, etc. Attach Form(s) W-2   | 8   |
|   | 9a  | Taxable interest   | 9a  |
|   | b   | Tax-exempt interest. Do not include on line 9a   | 9b  |
|   | 10a | Ordinary dividends   | 10a |
|   | b   | Qualified dividends (see instructions)   | 10b |
|   | 11  | Taxable refunds, credits, or offsets of state and local income taxes (see instructions)                                    | 11  |
|   | 12  | Scholarship and fellowship grants. Attach Form(s) 1042-S or required statement (see instructions)                          | 12  |
|   | 13  | Business income or (loss). Attach Schedule C or C-EZ (Form 1040)   | 13  |
|   | 14  | Capital gain or (loss). Attach Schedule D (Form 1040) if required. If not required, check here <input type="checkbox"/>    | 14  |
|   | 15  | Other gains or (losses). Attach Form 4797  | 15  |
| <b>Attach Form(s) W-2, 1042-S, SSA-1042S, 999-1042S, and 8288-A here. Also attach Form(s) 1099-R if tax was withheld.</b> | 16  | Reserved   | 16  |
|   | 17a | IRAs, pensions, and annuities  | 17a |
|   | 17b | Taxable amount (see instr.)  | 17b |
|   | 18  | Rental real estate, royalties, partnerships, trusts, etc. Attach Schedule E (Form 1040)                                    | 18  |
|   | 19  | Farm income or (loss). Attach Schedule F (Form 1040)   | 19  |
|   | 20  | Unemployment compensation  | 20  |
|   | 21  | Other income. List type and amount (see instructions)  | 21  |
|   | 22  | Total income exempt by a treaty from page 5, Schedule OI, item L, (1)(e)   | 22  |
|   | 23  | Combine the amounts in the far right column for lines 8 through 21. This is your <b>total effectively connected income</b> | 23  |

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## Transfers of Property to Foreign Corporations (Form 926)

- File Form 926 if U.S. person:
  - Transfers property other than cash to a foreign corporation under Sec 6038B(a)(1)(A), 367(d), or 367(e)
  - Transfers cash to a foreign corporation and immediately after the transfer the person holds directly or indirectly at least 10% of vote or value of the foreign corporation, **OR**
  - Transfers cash to a foreign corporation and the amount of cash transferred to the foreign corporation during the 12-month period ending on the date of the transfer exceeds \$100,000



## Transfers of Property to Foreign Corporations (Form 926)

- If the transferor is a partnership (domestic or foreign), the domestic partners of the partnership, not the partnership itself, are required to file Form 926
- Each domestic partner is treated as a transferor of its proportionate share of the property



## Transfers of Property to Foreign Corporations (Form 926)

RETURN BY A U.S. TRANSFEROR OF PROPERTY TO A FOREIGN CORPORATION (FORM 926)

THE PARTNERSHIP OWNS A DIRECT INTEREST IN VARIOUS PARTNERSHIPS THAT CONTRIBUTED PROPERTY, EITHER DIRECTLY OR INDIRECTLY, TO FOREIGN CORPORATIONS DESCRIBED IN IRC SECTION 6038b. PURSUANT TO TREASURY REGULATION SECTION 1.6038B-1(b)(3), EACH PARTNER WHO IS A U.S. PERSON IS REQUIRED TO FILE IRS FORM 926 WITH THE PARTNER'S TAX RETURN IF THE PARTNER'S SHARE OF THE CASH TRANSFERRED TO THE FOREIGN CORPORATION EXCEEDS \$100,000.

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## Transfers of Property to Foreign Corporations (Form 926)

LINE 2 (A): TRANSFEROR PARTNER INFORMATION  
ENTITY NAME:

EIN:

LINE 2(B): PICK UP PRO-RATA SHARE OF PARTNERSHIP ASSETS?  
LINE 2(C): PARTNER DISPOSING OF ENTIRE INTEREST IN PARTNERSHIP?  
LINE 2(D): PARTNER DISPOSING OF INTEREST IN REGULARLY TRADED LP?

PART II: TRANSFeree FOREIGN CORPORATION INFORMATION

LINE 3: NAME OF TRANSFeree

LINE 4: EIN OF TRANSFeree

LINE 5: ADDRESS OF TRANSFeree

LINE 6: PLACE OF ORGANIZATION OF TRANSFeree  
LINE 7: FOREIGN LAW CHARACTERIZATION

LINE 8: IS IT A CONTROLLED FOREIGN CORPORATION?

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## Transfers of Property to Foreign Corporations (Form 926)

### No filing requirement

|                  |  |  |              |
|------------------|--|--|--------------|
| <u>PART III:</u> |  | <u>INFORMATION REGARDING TRANSFER OF PROPERTY</u>            |              |
| (A)              | DATE OF TRANSFER   |  | 1/31/2014    |
| (C)              | FAIR MARKET VALUE ON DATE OF TRANSFER                            |  | 436          |
| <u>PART IV:</u>  |  | <u>ADDITIONAL INFORMATION REGARDING TRANSFER OF PROPERTY</u> |              |
| LINE 9(A)        | INTEREST IN THE FOREIGN CORPORATION BEFORE TRANSFER              |  | 0.000734%    |
| LINE 9(B)        | INTEREST IN THE FOREIGN CORPORATION AFTER TRANSFER               |  | 0.000798%    |
| LINE 10          | TYPE OF NON-RECOGNITION TRANSACTION                              |  | IRC SEC. 351 |
| LINE 11(A) - (D) | IS THE TRANSFER SUBJECT TO?                                      |  | NO TO ALL    |
| LINE 12          | CHANGE IN CLASSIFICATION OF THE TRANSFEREE?                      |  | NO           |
| LINE 13(A) - (D) | IS INCOME RECOGNIZED UNDER TEMP. REG. SEC. 1.367(A)-4 THROUGH 6? |  | NO TO ALL    |
| LINE 14          | DID THE TRANSFER QUALIFY FOR TRADE OR BUSINESS EXCEPTION?        |  | NO           |
| LINE 15A         | WAS FOREIGN GOODWILL OR GOING CONCERN VALUE TRANSFERRED?         |  | NO           |
| LINE 16          | WAS CASH THE ONLY PROPERTY TRANSFERRED?                          |  | YES          |
| LINE 17A         | WAS INTANGIBLE PROPERTY TRANSFERRED?                             |  | NO           |

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## Investment in Foreign Corporations (Form 5471)

- File Form 5471 if U.S. person qualifies under one or more of the Categories of Filers:
  - **Category 1 Filer:** U.S. shareholder of a foreign corporation that is a Sec 965 Specified Foreign Corporation (SFC) at any time during any tax year of the foreign corporation, and who owned the stock on the last day in that year on which it was a SFC

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## Investment in Foreign Corporations (Form 5471)

- File Form 5471 if U.S. person qualifies under one or more of the Categories of Filers:
  - **Category 2 Filer:** U.S. citizen or resident who is an officer or director of a foreign corporation in which a U.S. person has acquired (in one or more transactions):
    - Stock which meets the 10% stock ownership requirement
    - An additional 10% or more (vote or value) of the outstanding stock of the foreign corporation



## Investment in Foreign Corporations (Form 5471)

- File Form 5471 if U.S. person qualifies under one or more of the Categories of Filers:
  - **Category 3 Filer:**
    - U.S. person who acquires stock in a foreign corporation which, when added to any stock owned on date of acquisition, meets the 10% ownership requirement
    - U.S. person who acquires stock which, without regard to stock already owned on date of acquisition, meets the 10% stock ownership requirement
    - U.S. person who disposes of sufficient stock in the foreign corporation to reduce his/her interest to less than the 10% stock ownership requirement
    - Person who is treated as a U.S. shareholder under Sec 953(c)
    - Stock which meets the 10% stock ownership requirement
    - Person who becomes a U.S. person while meeting the 10% stock ownership requirement



## Investment in Foreign Corporations (Form 5471)

- File Form 5471 if U.S. person qualifies under one or more of the Categories of Filers:
  - **Category 4 Filer:** U.S. person who had control of a foreign corporation during the annual accounting period of the foreign corporation (control = >50% vote or value)



## Investment in Foreign Corporations (Form 5471)

- File Form 5471 if U.S. person qualifies under one or more of the Categories of Filers:
  - **Category 5 Filer:** U.S. shareholder who owns stock in a foreign corporation that is a Controlled Foreign Corporation (CFC) at any time during any tax year of the foreign corporation, and who owned that stock on the last day in that year on which it was a CFC
    - CFC is a foreign corporation that has U.S. shareholders that own on any day of the tax year >50% of vote or value
    - U.S. shareholder is a U.S. person who owns 10% or more of vote or value





## Investment in Foreign Corporations (Form 5471)

| Required Information*  | Category of Filer |   |   |   |   |
|--|-------------------|---|---|---|---|
|  | 1                 | 2 | 3 | 4 | 5 |
| The identifying information on page 1 of Form 5471 above<br><i>Schedule A, see Specific Instructions</i> | ✓                 | ✓ | ✓ | ✓ | ✓ |
| Schedule A   |                   |   | ✓ | ✓ |   |
| Schedule B, Part I   |                   |   | ✓ | ✓ |   |
| Schedule B, Part II  | ✓                 |   | ✓ | ✓ | ✓ |
| Schedules C and F  |                   |   | ✓ | ✓ |   |
| Separate Schedule E (including Schedule E-1)   | ✓                 |   |   | ✓ | ✓ |
| Schedule G   |                   |   | ✓ | ✓ | ✓ |
| Separate Schedule H  |                   |   |   | ✓ | ✓ |
| Schedule I and Separate Schedule I-1   |                   |   |   | ✓ | ✓ |
| Separate Schedule J  | ✓                 |   |   | ✓ | ✓ |
| Separate Schedule M  |                   |   |   | ✓ |   |
| Separate Schedule O, Part I  |                   | ✓ |   |   |   |
| Separate Schedule O, Part II   |                   |   | ✓ |   |   |
| Separate Schedule P  | ✓                 |   |   | ✓ | ✓ |

\*See also Additional Filing Requirements on this page.



## Investments in Foreign Partnerships (Form 8865)

- File Form 8865 if U.S. person qualifies under one or more of the Categories of Filers:
  - **Category 1 Filer:** U.S. person controlled the foreign partnership at any time during the partnership's tax year (control = >50% interest)
    - There may be more than one Category 1 filer due to the constructive ownership rules under IRC Sec 267(c)



## Investments in Foreign Partnerships (Form 8865)

- File Form 8865 if U.S. person qualifies under one or more of the Categories of Filers:
  - **Category 2 Filer:** U.S. person owned a 10% or greater interest in the partnership at any time during the tax year while the partnership was controlled (>50%) by U.S. persons each owning at least a 10% interest
    - If the foreign partnership had a Category 1 filer at any time during the tax year, no person will be considered a Category 2 filer



## Investments in Foreign Partnerships (Form 8865)

- File Form 8865 if U.S. person qualifies under one or more of the Categories of Filers:
  - **Category 3 Filer:** U.S. person contributed property during the person's tax year to a foreign partnership in exchange for an interest in the partnership under IRC Sec 721, if that person either:
    - Owned directly or constructively at least a 10% interest in the foreign partnership immediately after the contribution, **OR**
    - The total value of the property contributed exceeds \$100,000 (when added to the value of any other property contributed to the partnership by such person or any related person during the 12-month period ending on date of transfer)



## Investments in Foreign Partnerships (Form 8865)

- File Form 8865 if U.S. person qualifies under one or more of the Categories of Filers:
  - **Category 4 Filer:** U.S. person had 1 of 3 reportable events during the tax year.
    - Acquisitions: U.S. person owns a 10% or greater direct interest in the foreign partnership after the acquisition OR acquires at least a 10% interest in the foreign partnership
    - Dispositions: U.S. person owns less than a 10% direct interest in the foreign partnership after the disposition OR disposes of at least a 10% interest in the foreign partnership
    - Changes in proportional interests: U.S. person's direct proportional interest increased or decreased by at least the equivalent of a 10% interest in the foreign partnership



## Investments in Foreign Partnerships (Form 8865)

Filing Requirements for Categories of Filers

| Filing Requirements   | Category of Filers |   |   |   |
|---|--------------------|---|---|---|
|   | 1                  | 2 | 3 | 4 |
| Identifying Information—(page 1 of Form 8865)   | ✓                  | ✓ | ✓ | ✓ |
| Schedule A—Constructive Ownership of Partnership Interest   | ✓                  | ✓ | ✓ | ✓ |
| Schedule A-1—Certain Partners of Foreign Partnership  | ✓                  |   | ✓ |   |
| Schedule A-3—Affiliation Schedule   | ✓                  | ✓ | ✓ | ✓ |
| Schedule B—Income Statement—Trade or Business Income  | ✓                  |   |   |   |
| Schedule G—Statement of Application of the Gain Deferral Method Under Section 721                             | ✓                  |   | ✓ | ✓ |
| Schedule H—Acceleration Events and Exceptions Reporting Relating to Gain Deferral Method Under Section 721(c) | ✓                  |   | ✓ | ✓ |
| Schedule K—Partners' Distributive Share Items   | ✓                  |   |   |   |
| Schedule L—Balance Sheets per Books   | ✓                  |   |   |   |
| Schedule M—Balance Sheets for Interest Allocation   | ✓                  |   |   |   |
| Schedule M-1—Reconciliation of Income (Loss) per Books With Income (Loss) per Return                          | ✓                  |   |   |   |
| Schedule M-2—Analysis of Partners' Capital Accounts   | ✓                  |   |   |   |
| Schedule N—Transactions Between Controlled Foreign Partnership and Partners or Other Related Entities         | ✓                  | ✓ |   |   |
| Schedule D—Schedule D (Form 1065), Capital Gains and Losses   | ✓                  |   |   |   |
| Schedule K-1—Partner's Share of Income, Deductions, Credits, etc. (direct partners only)                      | ✓                  | ✓ |   |   |
| Schedule O—Transfer of Property to a Foreign Partnership  |                    |   | ✓ |   |
| Schedule P—Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership                      |                    |   |   | ✓ |



## Investments in Foreign Partnerships (Form 8865)

-----  
8865 FILING INFORMATION:  
=====

PLEASE NOTE THAT THE PARTNERSHIP HAS DIRECT/INDIRECT INVESTMENTS IN FOREIGN PARTNERSHIPS.  
WHEN REQUIRED THE PARTNERSHIP WILL FILE FORM 8865 FOR ITS DIRECT OR INDIRECT FOREIGN  
PARTNERSHIP INTERESTS.



## Investments in Foreign Partnerships (Form 8865)

### No filing requirement

F1) NAME OF FOREIGN PARTNERSHIP  
ADDRESS OF FOREIGN PARTNERSHIP

F2(a)) EIN OF FOREIGN PARTNERSHIP  
F3) COUNTRY ORGANIZED UNDER

|             |                              |         |
|-------------|------------------------------|---------|
| SCH O)      | TYPE OF PROPERTY TRANSFERRED | CASH    |
| PART I, (a) | DATE OF TRANSFER             | VARIOUS |
| PART I, (c) | FMV OF TRANSFER              | 216     |



## Foreign Tax Credit (FTC) (Form 1116)

- You can choose each tax year to take the amount of qualified foreign taxes paid or accrued as a foreign tax credit (FTC) or as an itemized deduction
- File Form 1116 if choosing to take the FTC



## Foreign Tax Credit (FTC) (Form 1116)

- Election to claim FTC without filing Form 1116 if all of the following requirements are met:
  - Only foreign source gross income for the tax year was passive category income
  - All income and foreign taxes paid/withheld were reported on a payee statement (Form 1099-DIV, 1099-INT, K-1, etc.)
  - Total creditable foreign taxes for the tax year are not more than \$300 (\$600 if MFJ)
- If this election is made, you cannot carry over to or from any other year any foreign taxes paid or accrued in a tax year to which the election applies



## Foreign Tax Credit (FTC) (Form 1116)

- You can claim a credit for foreign taxes in the tax year in which they are paid or accrued, depending on your method of accounting
  - If you use the accrual method of accounting, you can claim the credit *only* in the year in which you accrue the tax
  - If you use the cash method of accounting, you can choose to take the credit *either* in the year the tax is paid or in the year it is accrued
    - Once the accrual method is selected, it is irrevocable



## International K-1 Footnotes FTC – Form 1116

| LINE 16 - FOREIGN TRANSACTIONS   |               |
|--|---------------|
| A - NAME OF COUNTRY OR U.S. POSSESSION   | OTHER COUNTRY |
| B - GROSS INCOME FROM ALL SOURCES  | 170,956       |
| C - GROSS INCOME SOURCED AT PARTNER LEVEL  | 136,382       |
| D - FOREIGN GROSS INCOME SOURCED AT PARTNERSHIP LEVEL - PASSIVE                    | 11,913        |
| E - FOREIGN GROSS INCOME SOURCED AT PARTNERSHIP LEVEL - GENERAL LIMITATION         | 4,467         |
| G - DEDUCTIONS ALLOCATED AND APPORTIONED AT PARTNER LEVEL - INTEREST EXPENSE       | 58            |
| H - DEDUCTIONS ALLOCATED AND APPORTIONED AT PARTNER LEVEL - OTHER                  | 10,682        |
| I - DEDUCTIONS ALLOCATED AND APPORTIONED AT PARTNERSHIP LEVEL - PASSIVE            | 3,531         |
| J - DEDUCTIONS ALLOCATED AND APPORTIONED AT PARTNERSHIP LEVEL - GENERAL LIMITATION | 3,291         |
| M - TOTAL FOREIGN TAXES ACCRUED  | 30            |



## Foreign Tax Credit (FTC) (Form 1116)

| Part II Foreign Taxes Paid or Accrued (see instructions)                                      |   |                               |               |                         |              |   |               |                         |              |   |
|---|---|-------------------------------|---------------|-------------------------|--------------|---|---------------|-------------------------|--------------|---|
| Country   | Credit is claimed for taxes (you must check one)<br>(h) <input type="checkbox"/> Paid<br>(i) <input type="checkbox"/> Accrued | Foreign taxes paid or accrued |               |                         |              |   |               |                         |              |   |
|   |   | In foreign currency           |               |                         |              | In U.S. dollars                         |               |                         |              |   |
|   |   | Taxes withheld at source on:  |               |                         |              | Taxes withheld at source on:            |               |                         |              |   |
|   |   | (j) Date paid or accrued      | (k) Dividends | (l) Rents and royalties | (m) Interest | (n) Other foreign taxes paid or accrued | (o) Dividends | (p) Rents and royalties | (q) Interest | (r) Other foreign taxes paid or accrued |
| A   |   |                               |               |                         |              |   |               |                         |              |   |
| B   |   |                               |               |                         |              |   |               |                         |              |   |
| C   |   |                               |               |                         |              |   |               |                         |              |   |
| 8 Add lines A through C, column (s). Enter the total here and on line 9, page 2 . . . . . ▶ 8 |   |                               |               |                         |              |   |               |                         |              |   |

For Paperwork Reduction Act Notice, see instructions. Cat. No. 11440U Form 1116 (2014)

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## Specified Foreign Financial Assets (Form 8938)

- Specified foreign financial assets include:
  - financial accounts maintained by a foreign financial institution
  - stocks or securities issued by non-US persons
  - any interest in a foreign entity
  - financial instrument or contract with a non-US issuer or counterparty
  - stock issued by a foreign corporation
  - capital or profits interest in a foreign partnership
  - note, bond, debenture or other form of indebtedness issued by a foreign person
  - interest in a foreign trust or foreign estate
  - etc.
- Does not include foreign social security

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## Specified Foreign Financial Assets (Form 8938)

- Exceptions to reporting:
  - Not required to report any asset if it's reported on one or more of the forms below, but must identify on Form 8938 the form(s) on which the specified foreign financial asset is reported and how many of the forms are being filed
    - Forms 3520, 3520-A, 5471, 8621, 8865
  - Must identify on form(s) above if any Excepted Specified Foreign Financial Assets are reported (i.e., checkbox Form 8621)
  - Must include the value of the assets reported on other forms in determining whether you satisfy the Form 8938 reporting threshold that applies to you



## Passive Foreign Investment Company (PFIC) (Form 8621)

- A PFIC is a foreign corporation that meets either the income or asset test
  - **Income Test:** 75% or more of the foreign corporation's gross income is passive
  - **Asset Test:** At least 50% of the assets produce passive income or are held for the production of passive income





### Passive Foreign Investment Company (PFIC) (Form 8621)

- These rules are an additional anti-deferral mechanism
- Enacted to equalize the treatment of foreign and U.S. investment vehicles
- Exception from PFIC classification for 10% US Shareholders of CFCs (CFC trumps PFIC)



### Passive Foreign Investment Company (PFIC) (Form 8621)

- File Form 8621 if U.S. person:
  - Receives certain direct or indirect distributions from a PFIC
  - Recognizes gain on a direct or indirect disposition of PFIC stock
  - Is reporting information with respect to a QEF or section 1296 mark-to-market election
  - Is making an election reportable in Part II of the form
  - Is required to file an annual report pursuant to section 1298(f)
  - Is making a qualifying insurance corporation election under the alternative facts and circumstances test



## Passive Foreign Investment Company (PFIC) (Form 8621)

- If the shareholder owns one PFIC and through that PFIC owns one or more other PFICs, the shareholder must either:
  - File Form 8621 for each PFIC in the chain, or
  - Complete Form 8621 for the first PFIC and, in an attachment, provide the information required on Form 8621 for each of the other PFICs in the chain



## Passive Foreign Investment Company (PFIC) (Form 8621)

- Default PFIC Rules (Section 1291):
  - “Excess distributions” are treated as being earned ratably over the shareholder's holding period of the stock and subject to tax at ordinary income rates in each year
  - Interest charge is on each net increase in tax for the period
  - Total tax and interest included on the current year income tax return
  - Any gain on the sale is treated as ordinary income for the excess distribution amount attributable to the current year



## Passive Foreign Investment Company (PFIC) (Form 8621)

### Example 1291 Calculation

Additional Tax and Interest Calculation

| A<br>Tax<br>Year | B<br>Days in<br>Tax<br>Year | C<br>Excess<br>Distribution<br>Allocated to<br>Each Day<br>(from line 7) | D<br>Excess<br>Distribution<br>Allocated to<br>Each Year<br>(multiply column<br>B by column C) | E<br>Highest Marginal<br>Tax Rate | F<br>Increase in Tax<br>(multiply<br>column D by<br>column E) | G<br>Foreign Tax Credit<br>Allocated to<br>Each Day<br>(from line 12) | H<br>Foreign Tax Credit<br>Allocated to<br>Each Year<br>(multiply column<br>B by column G) | I<br>Additional Tax<br>(subtract column<br>H from column F) | J<br>Interest on<br>Increase in Tax |
|------------------|-----------------------------|--|--|-----------------------------------|---|---|--|---|-------------------------------------|
| 2010             | 296                         | 9.7956307  | 2,900.00   | .350000000                        | 1,015.00  |   |  | 1,015.00  | 26.39                               |
| 2011             | 365                         | 9.7956307  | 3,575.00   | .350000000                        | 1,251.00  |   |  | 1,251.00  | 69.62                               |
| 2012             | 366                         | 9.7956307  | 3,585.00   | .350000000                        | 1,255.00  |   |  | 1,255.00  | 109.84                              |
| 2013             | 365                         | 9.7956307  | 3,575.00   | .396000000                        | 1,416.00  |   |  | 1,416.00  | 156.18                              |
| * 2014           |                             |  |  |                                   |   |   |  |   | 45.49                               |
| ** 2014          | 27                          | 9.7956307  | 264.00   |                                   |   |   |  |   |                                     |
|                  |                             |  |  |                                   |   |   |  |   |                                     |
|                  |                             |  |  |                                   |   |   |  |   |                                     |
|                  |                             |  |  |                                   |   |   |  |   |                                     |
|                  |                             |  |  |                                   |   |   |  |   |                                     |

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\* INTEREST ON PRIOR YEAR(S) ADDITIONAL TAX

\*\* EXCESS DISTRIBUTION ALLOCATED TO CURRENT TAX YEAR OR PRE-PFIC YEAR

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## Passive Foreign Investment Company (PFIC) (Form 8621)

- Elections:
  - Qualifying Electing Fund (“QEF”) Election
  - Mark-to-Market Election
  - Deemed Sale and Dividend Elections

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## Passive Foreign Investment Company (PFIC) (Form 8621)

- Qualifying Electing Fund (“QEF”) Election
  - U.S. shareholder elects to include annually in income his share of the PFIC’s ordinary income and capital gains
  - Character is retained (ordinary/capital)
  - PFIC must agree to compute its earnings under the U.S. tax accounting principles, report its earnings annually to its U.S. shareholders, and allow its U.S. shareholders to inspect its books and records



## Passive Foreign Investment Company (PFIC) (Form 8621)

- Mark-to-Market Election
  - U.S. shareholder may elect to mark PFIC shares to market annually if PFIC shares are publicly traded (US or foreign exchange)
  - Resulting gain is ordinary and is generally U.S. source
  - Mark-to-market loss may be claimed only to extent of prior mark-to-market gain
  - Losses in excess of unreversed inclusions are treated as capital losses (tracked as short or long term)
  - Amounts included under this election, as well as gain on the actual sale or other disposition of the PFIC stock, are treated as ordinary income



## Passive Foreign Investment Company (PFIC) (Form 8621) – Exceptions to Filing

- Aggregate value is \$25,000 or less for PFIC stock held directly
- Aggregate value is \$5,000 or less for PFIC stock held indirectly
- Applies to 1291 funds
- Exempt organizations
- Special rules for estates and trusts



## Passive Foreign Investment Company (PFIC) (Form 8621) No filing requirement Example

### PASSIVE FOREIGN INVESTMENT COMPANIES (PFICS)

THE FUND IS A U.S. PARTNERSHIP THAT HAS MADE A TIMELY QUALIFIED ELECTING FUND ("QEF") ELECTION UNDER IRC SECTION 1295 OR A MARK TO MARKET ("MTM") ELECTION UNDER IRC 1296 WITH RESPECT TO ITS INVESTMENTS IN UNDERLYING PASSIVE FOREIGN INVESTMENT COMPANIES ("PFICS") OR HAS RECEIVED NOTIFICATION THAT ITS INVESTMENTS IN U.S. PARTNERSHIPS HAVE MADE TIMELY QEF OR MTM ELECTIONS FOR THEIR INVESTMENTS IN PFICS, EFFECTIVE FOR EACH YEAR OF OWNERSHIP, AND HAS FILED THE REQUIRED FORM(S) 8621. YOUR PRO RATA SHARE OF ANY ORDINARY EARNINGS, NET CAPITAL GAIN, OR MTM INCLUSIONS IS REFLECTED ON THE APPROPRIATE LINE OF YOUR SCHEDULE K-1. AS A PARTNER IN A U.S. PARTNERSHIP THAT HAS MADE THE QEF OR MTM ELECTION AND FILED FORM 8621, YOUR ALLOCABLE SHARE OF THIS INCOME IS NOT REQUIRED TO BE FURTHER REPORTED ON AN ADDITIONAL FORM 8621. PLEASE CONSULT YOUR TAX ADVISOR.

THE PARTNERSHIP INTENDS TO MAKE THE ELECTION PROVIDED UNDER REG. SECTION 1.1411-10(G) WITH REGARD TO ALL TAX YEARS STARTING JANUARY 1, 2014, AND THUS, YOU DO NOT NEED TO MAKE ANY SUCH ELECTION ON YOUR TAX RETURN.



## Passive Foreign Investment Company (PFIC) (Form 8621) Filing requirement Example

Line 11A4 Gain (Loss) from the Disposition of a Section 1291 Fund  
Passive Foreign Investment Company ("PFIC") Information – IRC Section 1291

The gains included on Line 11A4 denoted as section 1291 Gain relate to PFICs that are not considered Qualifying Electing Funds. As a result of this classification, there are additional reporting requirements upon their disposition. This gain should be reported on Form 8621, Part V, Line 15f. The top of Form 8621 Page 1 should also be completed.



## Global Intangible Low-Taxed Income (GILTI)

- New provision from 2017 Tax Cuts and Jobs Act (TCJA)
- IRC Section 951A
- U.S. Shareholder of any CFC shall include in gross income such shareholder's GILTI income for such taxable year
- GILTI defined:

".....with respect to any United States shareholder for any taxable year of such United States shareholder, the excess (if any) of-

such shareholder's net CFC tested income for such taxable year, over  
such shareholder's net deemed tangible income return for such taxable year"



## Global Intangible Low-Taxed Income (GILTI) Footnote Example

- Box 11, Code F: Section 951A Income \$xxxx
- Box 11, Code H: Subpart F Income other than Sections 951A and 965 Inclusion \$xxxx



## IRC Section 965 Deemed Repatriation

- U.S. shareholders are required to pay a transition tax on the untaxed foreign earnings of specified foreign corporations as if those earnings had been repatriated to the U.S.
- Applies to the last taxable year of a deferred foreign income corporation which begins before January 1, 2018
- The subpart F income of the foreign corporation is increased by the greater of the earnings and profits as of November 2, 2017 or December 31, 2017



## IRC Section 965 Deemed Repatriation

- Deferred income held in cash would be effectively taxed at 15.5 percent and any remaining amounts at 8 percent
- An election is available to pay the tax liability over an eight-year period
- The income inclusion may be reduced by earnings and profits deficits
- A reduced foreign tax credit applies to the inclusion



## IRC Section 965 Deemed Repatriation Footnote Example: S-Corporation Shareholder

### Section 965:

Amounts listed in Box 10A and 12S represent your portion of 965(A), Deemed Foreign Repatriation Income and 965(C), Deemed Foreign Repatriation Deduction, due to your indirect ownership of the Controlled Foreign Corporation (CFC)

This income is included to assist you with determining your transition tax under Section 965. Shareholders of an S-Corporation may make a 965(i)(1) election to defer payment of net Section 965 tax liability. Please consult your tax advisor for further guidance

### Section 962:

Information required to make a Section 962 election

Your portion of the deemed foreign tax paid if a Section 962 election is made: \$xxx





## IRC Section 965 Deemed Repatriation (cont.) Footnote Example: S-Corporation Shareholder

- With the information provided from the shareholder's K-1, one IRC 965 Transition Tax Statement must be attached to the shareholder's income tax return (2017 or 2018 depending on the deferred foreign corporation's year-end)
- In some cases, the taxpayer must also attach Form 965-A to their income tax return



## Other International Forms and Considerations

- FinCEN Form 114 (FBAR)
- IRC Sec 163(j)
- K-1s issued to non-profits



## Learning Objectives Recap

You should have learned to:

- Identify some of the more common K-1 footnotes related to international tax
- Determine whether additional international tax reporting or filing requirements are necessary

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Who has a question?



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