(k) *Effective/applicability date.* (1) The rules of this section, except for paragraph (j)(2)(v) of this section, are applicable as of April 1, 1995.

(2) The rules of paragraph (j)(2)(v) of this section are applicable as of December 8, 2005.

[T.D. 8701, 61 FR 68151, Dec. 27, 1996; 62 FR 7155, Feb. 18, 1997, as amended by T.D. 8750, 63 FR 13, Jan. 2, 1998; T.D. 9231, 70 FR 72915, Dec. 8, 2005; T.D. 9360, 72 FR 54821, Sept. 27, 2007]

§ 1.1291–10 Deemed sale election.

(a) *Deemed sale election.* This section provides rules for making the election under section 1291(d)(2)(A) (deemed sale election). Under that section, a shareholder (as defined in § 1.1291–9(j)(3)) of a PFIC that is an unpedigreed QEF may elect to recognize gain with respect to the stock of the unpedigreed QEF held on the qualification date (as defined in paragraph (e) of this section). If the shareholder makes the deemed sale election, the PFIC will become a pedigreed QEF with respect to the shareholder. A shareholder that makes the deemed sale election is treated as having sold, for its fair market value, the stock of the PFIC that the shareholder held on the qualification date. The gain recognized on the deemed sale is taxed under section 1291 as an excess distribution received on the qualification date. In the case of an election made by an indirect shareholder, the amount of gain to be recognized and taxed as an excess distribution is the amount of gain that the direct owner of the stock of the PFIC would have realized on an actual sale or other disposition of the stock of the PFIC indirectly owned by the shareholder. Any loss realized on the deemed sale is not recognized. For the definitions of PFIC, QEF, unpedigreed QEF, and pedigreed QEF, see § 1.1291–9(j) (1) and (2).

(b) *Who may make the election.* A shareholder of an unpedigreed QEF may make the deemed sale election provided the shareholder held stock of that PFIC on the qualification date. A shareholder is treated as holding stock of the PFIC on the qualification date if its holding period with respect to that stock under section 1223 includes the qualification date. A deemed sale election may be made by a shareholder that would realize a loss on the deemed sale.

(c) *Time for making the election.* The shareholder makes the deemed sale election in the shareholder's return for the taxable year that includes the qualification date. If the shareholder and the PFIC have the same taxable year, the shareholder makes the deemed sale election in either the original return for the taxable year for which the shareholder makes the section 1295 election, or in an amended return for that year. If the shareholder and the PFIC have different taxable years, the deemed sale election must be made in an amended return for the taxable year that includes the qualification date. If the deemed sale election is made in an amended return, the amended return must be filed by a date that is within three years of the due date, as extended under section 6081, of the original return for the taxable year that includes the qualification date.

(d) *Manner of making the election.* A shareholder makes the deemed sale election by filing Form 8621 with the return for the taxable year of the shareholder that includes the qualification date, reporting the gain as an excess distribution pursuant to section 1291(a), and paying the tax and interest due on the excess distribution. A shareholder that makes the deemed sale election after the due date of the return (determined without regard to extensions) for the taxable year that includes the qualification date must pay additional interest, pursuant to section 6601, on the amount of the underpayment of tax for that year. A shareholder that realizes a loss on the deemed sale reports the loss on Form 8621, but does not recognize the loss.

(e) *Qualification date*—(1) *In general.* Except as otherwise provided in this paragraph (e), the qualification date is the first day of the PFIC's first taxable year as a QEF (first QEF year).

(2) *Elections made after March 31, 1995, and before January 27, 1997*—(i) *In general.* The qualification date for deemed sale elections made after March 31, 1995, and before January 27, 1997, is the first day of the shareholder's election year. The shareholder's election year is the taxable year of the shareholder for which it made the section 1295 election.

(ii) *Exception.* A shareholder who made the deemed sale election after May 1, 1992, and before January 27, 1997, may elect to change its qualification date to the first day of the first QEF year, provided the periods of limitations on assessment for the taxable year that includes that date and for the shareholder's election year have not expired. A shareholder changes the qualification date by filing amended returns, with revised Forms 8621, for the shareholder's election year and the shareholder's taxable year that includes the first day of the first QEF year, and making all appropriate adjustments and payments.

(f) *Adjustments to basis*—(1) *In general.* A shareholder that makes the deemed sale election increases its adjusted basis of the PFIC stock owned directly by the amount of gain recognized on the deemed sale. If the shareholder makes the deemed sale election with respect to a PFIC of which it is an indirect shareholder, the shareholder's adjusted basis of the stock or other property owned directly by the shareholder, through which ownership of the PFIC is attributed to the shareholder, is increased by the amount of gain recognized by the shareholder. In addition, solely for purposes of determining the subsequent treatment under the Code and regulations of a shareholder of the stock of the PFIC, the adjusted basis of the direct owner of the stock of the PFIC is increased by the amount of gain recognized on the deemed sale. A shareholder shall not adjust the basis of any stock with respect to which the shareholder realized a loss on the deemed sale.

(2) *Adjustment of basis for section 1293 inclusion with respect to deemed sale election made after March 31, 1995, and before January 27, 1997.* For purposes of determining the amount of gain recognized with respect to a deemed sale election made after March 31, 1995, and before January 27, 1997, by a shareholder that treats the first day of the shareholder's election year as the qualification date, the adjusted basis of the stock deemed sold includes the shareholder's section 1293(a) inclusion attributable to the period beginning with the first day of the PFIC's first QEF year and ending on the day before the qualification date.

(g) *Treatment of holding period.* For purposes of applying sections 1291 through 1297 to the shareholder after the deemed sale, the shareholder's holding period of the stock of the PFIC begins on the qualification date, without regard to whether the shareholder recognized gain on the deemed sale. For other purposes of the Code and regulations, this holding period rule does not apply.

(h) *Election inapplicable to shareholder of former PFIC.* A shareholder may not make the section 1295 and deemed sale elections if the foreign corporation is a former PFIC (as defined in §1.1291–9(j)(2)(iv)) with respect to the shareholder. For the rules regarding the election by a shareholder of a former PFIC, see §1.1297–3T.

(i) *Effective date.* The rules of this section are applicable as of April 1, 1995.

[T.D. 8701, 61 FR 68153, Dec. 27, 1996]

§ 1.1293–0 Table of contents.

This section contains a listing of the headings for §1.1293–1.

§1.1293–1 Current inclusion of income of qualified electing funds.

[T.D. 8750, 63 FR 13, Jan. 2, 1998; as amended by T.D. 8870, 65 FR 16319, Mar. 28, 2000]

§ 1.1293–1 Current taxation of income from qualified electing funds.

(a) *In general.* [Reserved]

(1) *Other rules.* [Reserved]

(2) *Net capital gain defined*—(i) *In general.* This paragraph (a)(2) defines the term net capital gain for purposes of sections 1293 and 1295 and the regulations under those sections. The QEF, as