October 1, 2021

Kinna Brewington
Internal Revenue Service
Room 6526
1111 Constitution Avenue NW
Washington, DC 20224

Re: Comments concerning return by a shareholder of a passive foreign investment company

Dear Ms. Brewington

We are writing today on behalf of the American Property Casualty Insurance Association, the National Association of Mutual Insurance Companies, the American Council of Life Insurers and the Reinsurance Association of America (the Trades). We are responding to the Internal Revenue Service request for comments concerning reducing the paperwork and respondent burden for shareholders of a passive foreign investment company (PFIC) that was included in Federal Register Vol. 86, No. 148. The Trades collectively represent the great majority of insurance companies issuing property and casualty (non-life) and life insurance throughout the United States.

U.S. Property and Casualty and Life insurance companies often utilize investment partnerships as part of their overall investment strategy that supports the claim liabilities, they have to their insurance customers. If these partnership investments are in a non-U.S. (i.e., foreign) partnership which owns any investments that are PFICs, the U.S. partner must file a Form 8621 annually for each such PFIC if certain requirements, as set out in the Code and Regulations,[1] are met.

Prior to the Hiring Incentives to Restore Employment (HIRE) Act of 2010 and the regulations subsequently issued, a U.S. partner of a foreign partnership that owned a PFIC was required to file a Form 8621 in the year in which it (1) made a reportable election, (2) recognized gain on an indirect disposition of PFIC stock, or (3) received certain indirect distributions from the PFIC. Once an election was made, Form 8621 had to be filed annually regardless of whether the taxpayer had an income event.

[1] Unless otherwise indicated, all "section" references herein are to the Internal Revenue Code of 1986, as amended (the "Code"), and all "Treas. Reg. §" references are to the Treasury Regulations promulgated thereunder (the "Regulations").

However, if a taxpayer did not make a reportable election or did not have an income recognition event, Form 8621 was not required. Further, for taxpayers who made a reportable election for tax years prior to the HIRE Act, Form 8621 required additional work and analysis by the taxpayer only if there was an income event affecting the taxpayer's taxable income.

Generally, the most common event that triggered the filing of a Form 8621 for the U.S. Property and Casualty and Life industry was the qualified electing fund (QEF) election, typically made in the first year of the U.S. partner's indirect ownership of the PFIC.[2] In years following the QEF election, the U.S. partner was required to pick up their annual share of the ordinary earnings and capital gains of the PFIC, if any.

The HIRE Act did not alter the required income inclusion pursuant to a QEF election; rather, the law imposed a new tax compliance obligation by requiring each shareholder of a PFIC to file an annual return from each U.S. shareholder of a PFIC with such return containing information as required under Treasury Regulations.

Treasury Regulation §1.1298-1(b)(1) was issued requiring the PFIC summary of annual information to be reported on a Form 8621, which includes details of shares ownership and valuation of such shares, resulting in an increase in the time spent completing Forms 8621. To illustrate:

- Prior to the HIRE Act, an indirect U.S. partner of a foreign partnership that owned a PFIC would have filed Forms 8621 only if making a reportable election or recognizing income. Information on Forms 8621 from one tax year to the next changed only to the extent of income recognized, if any. No valuation of the indirect interest in the PFIC was necessary.
- After the HIRE ACT, every indirect U.S. partner of a foreign partnership that owned a PFIC would need to file Form 8621 each year, regardless of whether a reportable election was made, or income recognized, and the amount of information disclosed on Form 8621 has increased.

Thus, the annual Form 8621 reporting requirement imposed by the HIRE Act has resulted in an increase in time spent on Forms 8621 being filed by U.S. Property and Casualty and Life insurance companies each year, with no change in the taxable income recognized by the reporting taxpayer.

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[2] Section 1295(b)(1) of the provides that an election, once made with respect to any company, shall apply to all subsequent taxable years of the taxpayer with respect to such company unless revoked by the taxpayer with the consent of the Secretary. Treas. Reg. §1.1295-1(f) prescribes the manner of making the annual filing for each tax year to which the election under Section 1295 applies.

We feel that the Form 8621 annual reporting required by the general rule of the HIRE Act results in a compliance burden that is unnecessary to support the U.S. partner's recognized income for highly regulated financial institutions such as U.S. Property and Casualty and Life insurance companies. We respectfully request that you exercise your authority under the HIRE Act to provide an exception and roll back the reporting requirements for these entities to those in place prior to the HIRE Act.

We appreciate the opportunity to comment. If you have any questions, please feel free to contact Joseph Sieverling (sieverling@reinsurance.org or 202-783-8312), Regina Rose (reginarose@acli.com or 202-624-2000), David Pearce (david.pearce@apci.org or 202-828-7114), or Jonathan Rodgers (jrodgers@namic.org or -317-876-4206).

Sincerely,

David F. Pearce Jr.
Vice President and Director of Tax Policy

Jonathan Rodgers
Director of Financial and Tax Policy

Joseph B. Sieverling
Senior Vice President and Director of Financial Services

Regina Y. Rose
Senior Vice President, Taxes, Retirement Security