Presented by **Mary Beth Lougen** EA USTCP
Chief Operating Officer
Expat Tax Tools

Form 8621 Calculator presents

How to Calculate Form 8621-Line 15

SAVE TIME. SERVE YOUR CLIENTS. STOP THE HEADACHES.

What's a PFIC?

Passive foreign investment companies (PFICs) are foreign corporations that meet one of 2 tests

1. The income test is met if greater than 75% of the corporation's gross income for its tax year is passive income
2. The asset test is met if 50% or more of the average gross value of the assets in the foreign corporation produce passive income.

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PFIC Reporting

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- Required annual reporting for U.S. persons who receive distributions from, recognize gain on, are making an election for, are required to report information as a result of an election, or who directly own an aggregate $25,000 ($50,000 MFJ) in PFIC investments on the last day of their tax year.
- Failure to file Form 8621 in any year it is required will toll the statute of limitations on the entire tax return.

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PFIC Taxation

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§1291

- Default; event based & punitive
- Considers any gain & some distributions as received over entire holding period
- Taxes some income at the highest tax rates and adds interest

Mark to Market

- Values the investment at the end of each year- any increase in value is taxed as ordinary income, losses in value may or may not be allowed
- Phantom income and losses every year

Qualified Electing Fund

- Includes ordinary income & cap gains as if the fund distributed all its earnings each year (like US mutual funds)
- Phantom income every year, no losses until sold.
- Must receive a statement from fund to make election

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F8621 Part V

FORM 8621 CALCULATOR

Form 8621 (Rev. 12-2015) Page **3**

Part V **Distributions From and Dispositions of Stock of a Section 1291 Fund** (See instructions.)
*Complete a **separate** Part V for each excess distribution and disposition (see instructions).*

15a	Enter your total distributions from the section 1291 fund during the current tax year with respect to the applicable stock. If the holding period of the stock began in the current tax year, see instructions	15a	
b	Enter the total distributions (reduced by the portions of such distributions that were excess distributions but not included in income under section 1291(a)(1)(B)) made by the fund with respect to the applicable stock for each of the 3 years preceding the current tax year (or if shorter, the portion of the shareholder's holding period before the current tax year)	15b	
c	Divide line 15b by 3. (See instructions if the number of preceding tax years is less than 3.)	15c	
d	Multiply line 15c by 125% (1.25)	15d	
e	Subtract line 15d from line 15a. This amount, if more than zero, is the excess distribution with respect to the applicable stock. If there is an excess distribution, complete line 16. If zero or less and you did not dispose of stock during the tax year, **do not** complete the rest of Part V. See instructions if you received more than one distribution during the current tax year. Also, see instructions for rules for reporting a nonexcess distribution on your income tax return	15e	
f	Enter gain or loss from the disposition of stock of a section 1291 fund or former section 1291 fund. If a gain, complete line 16. If a loss, show it in brackets and **do not** complete line 16	15f	

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Prop Regs. 1.1291-2(a)

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Taxation of distributions by section 1291 funds.—

(a) *In general*.—Notwithstanding section 301 …..a shareholder is subject to the rules of section 1291…..with respect to a distribution ….. by a section 1291 fund, if any portion of such distribution is an <u>excess</u> distribution.

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IRC 301c

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The amount taxable in the case of a distribution from a corporation to its shareholder:

1. Amount constituting a dividend is that portion of the distribution which is a dividend shall be included in gross income.
2. Amount applied against basis is that portion of the distribution which is not a dividend shall be applied against and reduce the adjusted basis of the stock.
3. Amount in excess of basis is that portion of the distribution which is not a dividend, to the extent that it exceeds the adjusted basis of the stock, shall be treated as gain from the sale or exchange of property (capital gain)

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Definitions

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Dividends are the amounts paid from Earnings & Profits (E&P)

- Taxable

Return of Capital

- Not paid from E&P; non-taxable; reduce basis (not below -0-)

Distributions that are not from E&P over the amount of basis

- Taxable as capital gain

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Prop Regs. 1.1291-2(a)

FORM 8621 CALCULATOR

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(a) *In general*.—Notwithstanding section 301 …..a shareholder is subject to the rules of section 1291…..with respect to a distribution ….. by a section 1291 fund, if any portion of such distribution is an excess distribution.

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Prop Regs. 1.1291-2(a)

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- Any amount determined to be an excess distribution is allocated over the shareholder's holding period of the section 1291 fund.
- The portions of the excess distribution allocated to the current year & to pre-PFIC years are included in the shareholder's gross income as ordinary income.
- The portions of the excess distribution allocated to prior PFIC years are not included in the shareholder's gross income -Instead, the shareholder incurs tax plus interest (the deferred tax amount) on those portions

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Nonexcess distribution

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- A nonexcess distribution …..is the portion of the total amount of all distributions during the current ….. year …..that does not exceed 125 percent of the average amount of the distributions …..during the three taxable years of the … holding period that immediately precede the current year (or during the lesser number of taxable years in the shareholder's holding period)

Prop Reg 1.1291-2d

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Distribution

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Any direct or indirect -actual or constructive transfer of money or property by a 1291 stock

Prop Regs 1.1291-2b

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Distributions to determine nonexcess distributions Prop Reg 1.1291-2d

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- Distributions in any of the preceding three (or fewer) taxable years included in the shareholder's holding period are included in determining the nonexcess distribution without regard to the amount or character of the earnings & profits of the §1291 fund.

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Excess distribution

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- An excess distribution is that portion total distributions that exceeds 125% of the average of the last 3 year's distributions (plus any gain from the disposition of 1291 shares.)
- …an excess distribution and the taxation thereof are determined <u>without regard to the amount or character of the earnings and profits</u> of the section 1291 fund.
  - Return of capital (ROC) may be taxed under 1291
- …the excess distribution is calculated separately for each share of stock held (or block of shares with the same holding period)

Prop Regs 1.1291-2c

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Line 15b Form 8621

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15a	Enter your total distributions from the section 1291 fund during the current tax year with respect to the applicable stock. If the holding period of the stock began in the current tax year, see instructions	**15a**	
b	Enter the total distributions (reduced by the portions of such distributions that were excess distributions but not included in income under section 1291(a)(1)(B)) made by the fund with respect to the applicable stock for each of the 3 years preceding the current tax year (or if shorter, the portion of the shareholder's holding period before the current tax year)	**15b**	
c	Divide line 15b by 3. (See instructions if the number of preceding tax years is less than 3.)	**15c**	
d	Multiply line 15c by 125% (1.25)	**15d**	

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Line 15b Adjustment

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- *Amount not included in income*.—The portion of an excess distribution in a prior …year that was not included in income …*"because it was the basis of the deferred tax amount"*…is not treated as a distribution in that prior year for …*"purposes of line 15b"*
- *See* paragraph (e)(4), *Example 1*, of this section

Prop Regs 1.1291-2b2(ii)

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Line 15b Annualized

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- *Distributions received by predecessors*.—If a shareholder's holding period ….. includes the period the stock was held by another person, distributions made during the holding period of such other person with respect to the stock will be treated as if they had been received by the shareholder for purposes of paragraph (c)(2)(i) of this section (inclusion on line 15b as a distribution).

Prop Regs 1.1291-2c2(iii)

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2013 Annualized Distribution

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Taxpayer owns 1000 shares

He received $50 in dividends and $200 of ROC

Fund pays dividends quarterly

Had he owned the PFIC on January 1 - he would have received $200 in dividends (4*$50) & $200 of ROC

Annualized distribution is

0.20 = (4*50)/1000 sh

The $200 ROC is not included as it was not included in taxable income

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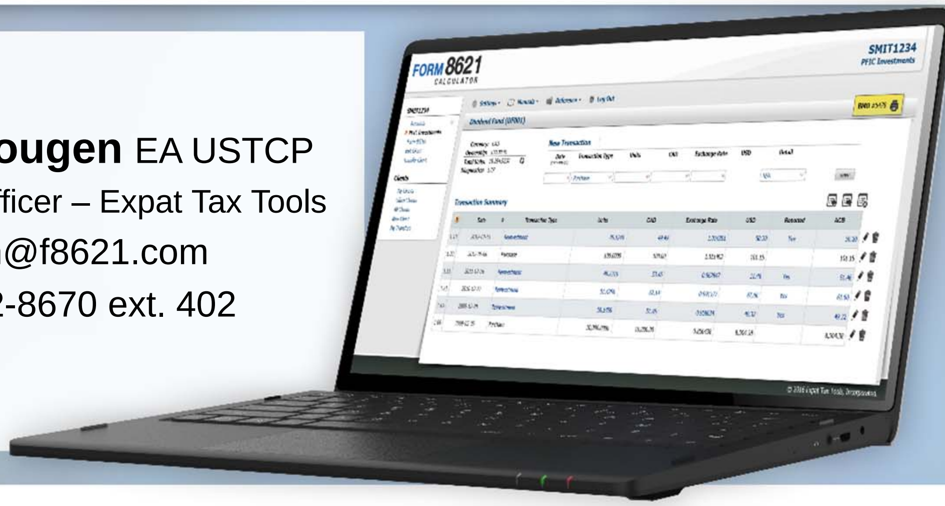

Mary Beth Lougen EA USTCP

Chief Operating Officer – Expat Tax Tools

B.Lougen@f8621.com

1 (844) 312-8670 ext. 402

www.f8621.com **www.expattaxtools.com**