

# Save time. Serve your clients. Stop the headaches.



Form 8621 Calculator makes reporting all of the elements of Passive Foreign Investment Company Income (PFICs) easier.

According to the IRS, it can take an experienced tax professional more than 24 hours to complete Form 8621. Save yourself the time and frustration. Form 8621 Calculator can complete the form in under an hour and turns it into simple data entry.

There are three different options for access that offer a different range of features. Choose the one that is right for your business.

**FORM 8621**  
CALCULATOR

[expattaxtools.com](http://expattaxtools.com)

## Flexible Pricing

Form 8621 Calculator can be licensed based on your business size. It means you can get the solution that fits your needs and budget.

	Cloud Solution	Small Server	Large Server
Server Fee*	n/a	\$2,200	\$4,400
1 – 50 Users	\$750 per User	\$325 per User	\$325 per User
51 – 100 Users		n/a	\$325 per User
101 – 200 Users			\$300 per User
201 – 300 Users			\$280 per User
301+ Users			\$265 per User

\*Server fee includes the first user license. All prices in USD. Canadian pricing is available.

## Security and Privacy

You need to protect your client's personal and financial information. Form 8621 Calculator puts you in control of sensitive client details so you decide how the information is seen and stored.

	Cloud Solution	Small Server	Large Server
Administrative Rights	Limited to user administration	Full	Full
Password Reset option	Enabled	Optional	Optional
Location of financial data	Cloud server	User's computer	User's computer
Location of sensitive client data	n/a Client sensitive data is not collected	User's computer The data can be limited by the System Administrator	User's computer The data can be limited by the System Administrator
Collecting and storing client SSN	Clients identified by ID only*	Optional	Optional
Collecting and storing client address	Clients identified by ID only*	Optional	Optional
Collecting and storing client bank account numbers	Limited to last 4 digits	No limitations	No limitations
Address of financial institution on Form 8621	Disabled	Optional	Optional
Search client list	Optional	Optional	Optional
Print Client ID on reports	Enabled	Optional	Optional
Custom company code in Reference Numbers	Enabled	Enabled	Enabled
Keeping copy of PDF forms on server	PDFs are generated on request, not saved to server	Optional	Optional
System back-up	Daily	Manual	Manual
Maintenance Updates	By Expat Tax Tools	Updates installed by client	Updates installed by client

\*Client ID is an alphanumeric identifier set by the User.

For cloud users, no client information prints on the completed form. Server users can choose how much client information appears on the completed form.

## System Server Requirements

	Small Server	Large Server
Installation*	By user	By user
Minimum Memory	8GB	16GB
Minimum Hard Drive	50GB	50GB
Hard Drive	SSD drives recommended	SSD drives recommended
CPU	Core i7 is recommended	Core i7 is recommended
Operating System	Not OP dependent. System should run Apache web-server, PHP 5.4+ (with FastCGI) and a MySQL database	Not OP dependent. System should run Apache web-server, PHP 5.4+ (with FastCGI) and a MySQL database

\*ETT provides an installation program for Microsoft Windows. Other operating systems require a custom installation.

Access Form 8621 Calculator in these supported browsers: Internet Explorer 10+ • Chrome 22+ • Firefox 27+ • Safari 6+

Form 8621 Calculator provides importable grids for users of Prosystems fx, Global fx or CCH Access Tax Software and it can handle 150+ currencies.

For more product information or to discuss licensing of Form 8621 Calculator, please contact:



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**FORM 8621**  
CALCULATOR

# FORM 8621 CALCULATOR

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?

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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.



## 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.



3

## 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



4

## F8621 Part V

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Form 8621 (Rev. 12-2015)		Page <b>3</b>
<b>Part V</b> <b>Distributions From and Dispositions of Stock of a Section 1291 Fund</b> (See instructions.) Complete a <b>separate Part V</b> for each excess distribution and disposition (see instructions).		
<b>15a</b> 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 . . . . .	<b>15a</b>	
<b>b</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) . . . . .	<b>15b</b>	
<b>c</b> Divide line 15b by 3. (See instructions if the number of preceding tax years is less than 3.) . . . . .	<b>15c</b>	
<b>d</b> Multiply line 15c by 125% (1.25) . . . . .	<b>15d</b>	
<b>e</b> 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, <b>do not</b> 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 . . . . .	<b>15e</b>	
<b>f</b> 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 <b>do not</b> complete line 16 . . . . .	<b>15f</b>	



5

## Prop Regs. 1.1291-2(a)

FORM **8621**  
CALCULATOR**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 excess distribution.



6

**IRC 301c****FORM 8621**  
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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)



7

**Definitions****FORM 8621**  
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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



8

## Prop Regs. 1.1291-2(a)

**FORM 8621**  
CALCULATOR

### 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 excess distribution.



9

## 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



10



## 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*



11

## 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*



12



## 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.



13

## 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 without regard to the amount or character of the earnings and profits 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*



14

## Line 15b Form 8621

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<b>15a</b>	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 . . . . .	<b>15a</b>	
<b>b</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) . . . . .	<b>15b</b>	
<b>c</b>	Divide line 15b by 3. (See instructions if the number of preceding tax years is less than 3.) . . . . .	<b>15c</b>	
<b>d</b>	Multiply line 15c by 125% (1.25) . . . . .	<b>15d</b>	



15

## 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)*



16

## 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)*



17

## 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

$$0.20 = (4*50)/1000 \text{ sh}$$

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

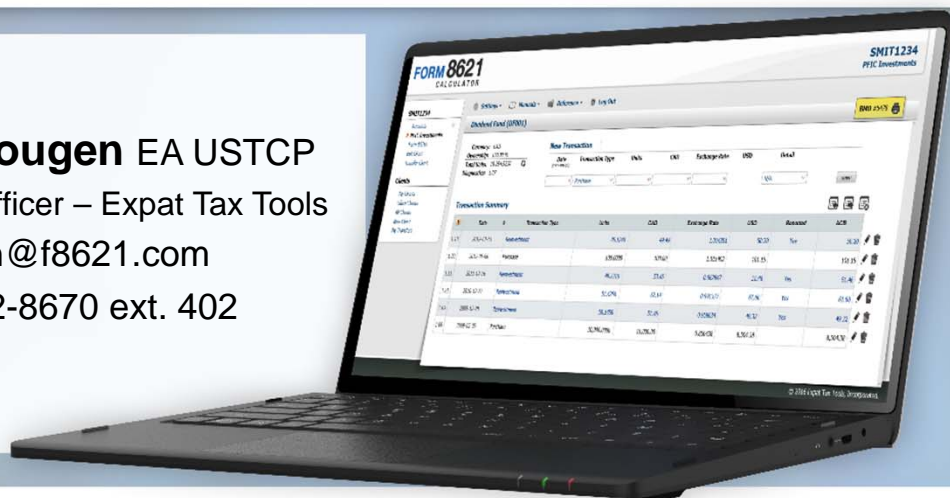


18

**FORM 8621**  
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# PROPOSED REGULATION

## § 1.1291-2.

### TAXATION OF DISTRIBUTIONS BY SECTION 1291 FUNDS.—

**(a) In general.**—Notwithstanding section 301 and the regulations under that section, a shareholder is subject to the rules of section 1291, this section, and § 1.1291-4 with respect to a distribution (including an indirect distribution as defined in paragraph (f) of this section) by a section 1291 fund, if any portion of such distribution is an excess distribution. An excess distribution is defined in paragraph (c)(1) of this section. Under paragraph (e)(2)(i) of this section, the excess distribution is allocated ratably over the shareholder's holding period of the stock of the section 1291 fund. The portions of the excess distribution allocated to the current shareholder year and to prePFIC years are included in the shareholder's gross income as ordinary income in the current shareholder year under paragraph (e)(2)(ii) of this section. The portions of the excess distribution allocated to prior PFIC years are not included in the shareholder's gross income pursuant to paragraph (e)(2)(iii) of this section. Instead, the shareholder incurs tax plus interest (the deferred tax amount) on those portions of the excess distribution, as provided in § 1.1291-4.

**(b) Distribution.—**

**(1) In general.**—For purposes of section 1291 and these regulations, unless otherwise provided in this paragraph (b), a distribution is any actual or constructive transfer of money or property by a section 1291 fund with respect to its stock. For example, a distribution includes a transfer of stock taxable pursuant to section 305(b) and (c), a transfer in redemption of stock taxable under section 301 pursuant to section 302(d), and an amount treated as a dividend under section 78. A distribution, however, does not include a transfer that qualifies under section 305(a) or 355(a). Transfers with respect to stock that are treated as dispositions of the stock under § 1.1291-3 are not treated as distributions under this section. For transfers with respect to stock (including transfers that qualify under section 355(a)) that are treated as dispositions, see § 1.1291-3.

**(2) Coordination with current inclusion rules.—**

**(i) Deemed dividend or income inclusions; distributions of previously taxed amounts.—**

Amounts included in gross income under section 551(a), 951(a), or 1293(a), and transfers of amounts not included in gross income by reason of section 551(d), 959, or 1293(c), are not treated as distributions for purposes of this section. The following example illustrates the rule of this paragraph (b)(2)(i).

**Example.**

USP, a domestic corporation, purchased in 1989 10 percent of the stock of FC, a section 1291 fund that also is a CFC. Both USP and FC use the calendar year as their taxable year. In 1989, USP, pursuant to section 951(a)(1), included in income \$100 of subpart F income of FC, none of which was distributed in 1989. The \$100 of subpart F income is not treated as a distribution taxable under section 1291. In 1990, FC did not have any subpart F income. In that year, FC distributed \$200 to USP. Of the \$200 distribution, \$100 had been previously taxed to USP. Because \$100 of the \$200 distribution is not included in gross income by reason of section 959, pursuant to § 1.1291-2(b)(2) that amount is not treated as a distribution for purposes of § 1.1291-2(c)(2)(i). Therefore, the total distribution, for purposes of calculating the excess distribution for 1990, is \$100.

**(ii) Other rules.**—For treatment of amounts that would be taxable in the same taxable year under section 951(a) or 1293(a) and section 1291, see § § 1.1291-2(f)(3) and 1.1291-3(e)(4)(ii).

**(3) Section 304 transactions.—**

**(i) In general.**—If, in a transaction described in section 304(a), the issuing corporation is a section 1291 fund, any amount treated as paid out of the earnings and profits of such section 1291 fund by virtue of section 304(b)(2) is treated as an excess distribution by such fund for purposes of section 1291 and this section. In addition, the transfer of the stock of such fund will be treated as a disposition to which § § 1.1291-3 and 1.1291-6 apply. If, in a transaction described in section 304(a), the acquiring corporation is a section 1291 fund, any amount paid by such corporation to the transferor is

treated as a distribution by such fund (notwithstanding the provisions of section 304(b)(2)), and the transferor is treated for purposes of section 1291 and this section as the owner of any stock of the fund that it owns directly or constructively under section 304(c). The following example illustrates the rule of this paragraph (b)(3)(i).

**Example.**

USP, a domestic corporation, owns all the stock of FS1 and FS2. FS1 and FS2 each have accumulated earnings and profits of \$100 that were not previously taxed under any other section of the Code. FS1, but not FS2, is a PFIC. USP has not elected under section 1295 to treat FS1 as a QEF. However, USP plans to make a section 1295 election to treat FS1 as a QEF, as well as the deemed dividend election under section 1291(d)(2)(B) to purge USP's holding period of the FS1 stock of its prior PFIC years. Before it makes those elections, USP plans to sell the stock of FS1 to FS2 for its fair market value of \$200. The transfer of the FS1 stock to FS2 is a transaction to which section 304 applies. Section 304(b)(2) provides that \$100 of the \$200 payment to USP is treated as paid directly by FS1 out of its earnings and profits. Pursuant to § 1.1291-2(b)(3)(i), the \$100 distribution to USP is taxable as an excess distribution. The transfer will not be a taxable disposition under § 1.1291-3 because USP's interest in FS1 is not reduced as a result of the transfer. See section 304(a)(1) and § 1.1291-6(c)(1)(i).

**(ii) Limitation.**—[Reserved]

**(c) Excess distribution and nonexcess distribution.—**

**(1) Excess distribution.**—An excess distribution is that portion of any direct or indirect distribution with respect to a share of stock of a section 1291 fund during the current shareholder year that is the ratable portion (as defined in paragraph (c)(4) of this section) of the total excess distribution (as defined in paragraph (c)(3) of this section), if any. Except as provided in § 1.1291-5, an excess distribution and the taxation thereof are determined without regard to the amount or character of the earnings and profits of the section 1291 fund. Except as provided in paragraph (d)(2) of this section (concerning shares of stock having the same holding period), the excess distribution is calculated separately for each share of stock held.

**(2) Nonexcess distribution.—**

**(i) In general.**—A nonexcess distribution with respect to a share of section 1291 stock is the portion of the total amount of all distributions during the current shareholder year with respect to the share that does not exceed 125 percent of the average amount of the distributions with respect to the share during the three taxable years of the shareholder's holding period (or during the lesser number of taxable years in the shareholder's holding period) that immediately precede the current shareholder year. Distributions in any of the preceding three (or fewer) taxable years of the shareholder included in the shareholder's holding period that began before 1987 are included in determining the nonexcess distribution.

**(ii) Amount not included in income.**—The portion of an excess distribution in a prior taxable year that was not included in income pursuant to § 1.1291-2 (e)(2)(iii) is not treated as a distribution in that prior year for purposes of paragraph (c)(2)(i) or (iii) of this section. For an illustration of the rule of this paragraph (c)(2)(ii), see paragraph (e)(4), Example 1, of this section.

**(iii) Distributions received by predecessors.**—If a shareholder's holding period of the stock of a section 1291 fund 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.

**(3) Total excess distribution.—**

**(i) In general.**—The total excess distribution with respect to a share of stock of a section 1291 fund is the excess, if any, of—

**(A)** The total amount of all distributions during the current shareholder year with respect to the share, over

**(B)** The nonexcess distribution with respect to that stock.

**(ii) Exception.**—Notwithstanding paragraph (c)(3)(i) of this section, the total excess distribution is zero for the taxable year of the shareholder in which the shareholder's holding period of the stock

begins. The following example illustrates the rule of this paragraph (c)(3)(ii). **Example.** On January 1, 1989, X, a U.S. person, gave his son Y, also a U.S. person, one share of stock of FC, a section 1291 fund, that X had purchased in 1986. Y purchased another share of FC stock on January 3, 1989. Y did not make the section 1295 election with respect to FC. In 1989, FC distributed \$100 for each outstanding share of its stock. Pursuant to § 1.1291-2(c)(3)(ii), no portion of the distribution in respect of the share Y purchased in 1989 is treated as an excess distribution. However, the distribution paid to Y with respect to the stock given to him by his father may be wholly or partly an excess distribution. Although Y first held that share of FC stock in 1989, Y's holding period includes the period X held that share of stock, as provided in section 1223(2), and therefore does not begin in 1989.

**(4) Ratable portion.**—The total excess distribution is allocated ratably to each distribution received with respect to a share of stock during the current shareholder year. A distribution's ratable portion of the total excess distribution is the product of the total excess distribution and the ratio of the distribution to the total distribution with respect to the share of stock during the current shareholder year. Each ratable portion of the total excess distribution is an excess distribution.

**(d) Special rules.**—The following rules apply for purposes of calculating the nonexcess distribution and the total excess distribution—

**(1) Stock acquired during the year.**—In general, a distribution in a prior taxable year with respect to a share of stock may only be taken into account in determining a nonexcess distribution under paragraph (c)(2)(i) of this section if the shareholder was a shareholder at the time of such distribution, or the distribution was received by a person whose holding period of the stock is included in the shareholder's holding period. However, with respect to a prior taxable year during which a person became a shareholder, the shareholder may instead take into account the total amount (or portion thereof) that the shareholder determines was actually paid by the section 1291 fund with respect to that share of stock during that taxable year. No other annualization rule will apply under section 1291(b)(3)(C). The following example illustrates the rule of this paragraph (d)(1).

**Example.** R, a U.S. person, became an indirect shareholder of one share of FC stock on August 1, 1991. R did not elect under section 1295 to treat FC, a PFIC, as a QEF. R and FC both use the calendar year as their taxable years. R determines, based on dividend information provided in FC's 1991 annual report, that FC distributed \$100 with respect to each outstanding share of its stock at the end of each quarter during that year. For purposes of calculating nonexcess distributions in 1992, 1993, and 1994, R may treat \$400 as the amount received in 1991. If R had been unable to determine the amount distributed in 1991 before August 1, the 1991 distribution would have been limited to the \$200 actually distributed after August 1 with respect to the one share of FC stock attributed to R.

**(2) Calculations for shares with same holding period.**—The calculation of the nonexcess distribution and the total excess distribution may be made on an aggregate basis for shares of stock having the same holding period (block of stock). The following example illustrates the rule of this paragraph (d)(2).

**Example.**

**(i) Facts.** X, a U.S. person that is a calendar year taxpayer, owns 12 shares of stock of FC, a PFIC. X has not elected under section 1295 to treat FC as a QEF. X acquired two of the 12 shares on December 31, 1986 (Block #1), four shares on December 31, 1987 (Block #2), and six shares on December 31, 1988 (Block #3). On June 30 of 1987 and 1988, FC distributed \$10 in respect of each outstanding share of its stock; no portion of either distribution was an excess distribution. On June 30, 1989, FC distributed \$30 in respect of each outstanding share of its stock. For purposes of determining the taxation of the 1989 distribution, the excess distribution may be calculated for each of the three blocks of stock held by X instead of on a share-by-share basis.

**(ii) Block #1 excess distribution.** The nonexcess distribution for Block #1 is \$25 (125% times \$20  $[(\$20 + \$20)/2]$ ). The total excess distribution for Block #1 is \$35 (\$60 – \$25).

**(iii) Block #2 excess distribution.** The nonexcess distribution for Block #2 is \$50 (125%  $\times$  \$40, the distribution made in the only preceding taxable year in the holding period of the Block #2 shares). The total excess distribution for Block #2 is \$70 (\$120 – \$50).

**(iv) Block #3.** There is no excess distribution with respect to the Block #3 stock because the first taxable year of the holding period of that block of stock is 1989, the taxable year of the distribution.

**(3) Effect of nontaxable distribution or exchange.**—



**(i) Tax-free distributions of stock.**—A distribution with respect to a share of stock, made during the shareholder's holding period for the share but before a distribution of stock under section 305(a) with respect to that share, will be treated ratably as a distribution with respect to the shares in the block of stock composed of the original share and the shares distributed with respect to that share pursuant to the stock distribution.

**(ii) Nontaxable exchange of stock.**—Distributions with respect to stock include distributions with respect to stock exchanged therefor in a nonrecognition transfer in which gain was not recognized pursuant to § 1.1291-6(c).

**(iii) Example.**—The following example illustrates the rule of paragraph (d)(3) of this section.

**Example.**

On December 31, 1985, X, a U.S. person, purchased one share of stock of FC, a corporation. FC has been a section 1291 fund with respect to X since FC's taxable year that began January 1, 1987. In both 1986 and 1987, FC distributed \$6 with respect to each share of its stock. FC transferred all its assets and liabilities to F, a PFIC, in a transaction that qualified as a reorganization defined in section 368(a)(1)(C) and that was effective on January 1, 1988. X exchanged his share of FC stock for one share of stock of F in an exchange to which section 354 applied and no gain was recognized pursuant to § 1.1291-6(c)(1). On December 31, 1988, F distributed \$3 with respect to each share of its stock. No part of the 1986, 1987, and 1988 distributions was an excess distribution. On December 31, 1989, F distributed \$10 with respect to each share of its stock. In calculating the total excess distribution for 1989, the \$6 distributions paid in 1986 and 1987 by FC with respect to the FC stock held by X, as well as the \$3 distribution paid by F in 1988 on the F stock received in exchange for the FC stock, are taken into account. Accordingly, the total excess distribution for 1989 is \$3.75 (\$10 – [125% × \$5 (the average distribution for the three preceding taxable years)]).

**(4) Distributions in a foreign currency.**—

**(i) In general.**—Except as provided in paragraph (d)(4)(ii) of this section, the nonexcess distribution and the total excess distribution are determined in U.S. dollars. Each distribution that must be taken into account for purposes of the calculation is translated into the U.S. dollar at the spot rate (within the meaning of § 1.988-1T (d)) on the date on which such distribution was made. The following example illustrates the rule of this paragraph (d)(4)(i).

**Example.**

USP, a domestic corporation, purchased on December 31, 1986, five percent of the stock of FC, a country X corporation that is a section 1291 fund with respect to USP. The functional currency of FC is the "LC", the currency of country X. FC made no distributions during 1987. FC distributed \$100 to USP on August 1, 1988; LC20 on November 20, 1989; and 100 units of country Y currency on December 13, 1990. In order to calculate the 1989 and 1990 excess distributions, USP must convert the 1989 distribution of LC20 into U.S. dollars at the spot rate on November 20, 1989, and the 1990 distribution of 100 units of country Y currency into U.S. dollars at the spot rate on December 13, 1990.

**(ii) Exception.**—If all distributions that must be taken into account for purposes of calculating the nonexcess distribution and the total excess distribution for the current shareholder year were made in a single currency (other than the U.S. dollar), the nonexcess distribution and total excess distribution will be determined in the currency in which the distributions were made. Each ratable portion of a total excess distribution determined in a foreign currency is translated into U.S. dollars at the spot rate on the date of the distribution to which the ratable portion is allocated.

**(5) Adjustments for section 642(c) charitable deduction.**—

**(i) In general.**—A trust that is permitted to deduct the amount of its fixed annual charitable obligation from gross income pursuant to section 642(c)(1) (the section 642(c) deduction) generally may adjust an excess distribution from a section 1291 fund as provided in this paragraph (d)(5) by the amount of the section 642(c) deduction. Except as otherwise provided in this paragraph (d)(5), the trust may adjust an excess distribution if, in satisfaction of its fixed annual obligation, it distributes—

- (A)** amounts received from the section 1291 fund;
- (B)** the stock of a section 1291 fund; or
- (C)** the proceeds from the sale thereof, to an organization described in section 170(c), as required

under the terms of the governing instrument of the trust. The adjustment provided in this paragraph (d)(5) is limited to the amount of the trust's fixed annual charitable obligation.

**(ii) Exception.**—This paragraph (d)(5) does not apply to a grantor of a trust if the grantor deducted from income, as provided in section 170(f)(2)(B), the value of an interest in any share of stock of the section 1291 fund upon its transfer to the trust.

**(iii) Adjustments.**—

**(A) Corpus consisting only of section 1291 fund stock.**—Where the assets of the trust consist only of stock of one or more section 1291 funds, the section 642(c) deduction first reduces the nonexcess distributions, if any, determined under paragraph (c)(2)(i) of this section. The amount of the section 642(c) deduction remaining after reduction of the nonexcess distributions reduces the portions of the excess distributions allocated to the prePFIC and current shareholder years. Finally, the amount of the section 642(c) deduction remaining after the prior two reductions reduces pro rata the portions of the excess distributions allocated to the prior PFIC years. The deferred tax amount, as defined in § 1.1291-4, is determined with respect to the adjusted allocations of the excess distributions.

**(B) Corpus consisting of section 1291 fund stock and other property.**—

**(1) Income from both section 1291 fund stock and other property.**—A distribution of income in satisfaction of a fixed annual charitable obligation is treated as distributed out of income, if any, derived from the trust property other than the stock of a section 1291 fund to the extent thereof, before being treated as distributed out of amounts received from a section 1291 fund. An adjustment will be permitted in the manner provided in paragraph (d)(5)(iii)(A) of this section only after the deduction permitted under section 642(c) has reduced income from other property to zero.

**(2) Use of corpus to satisfy obligation.**—The trust will not be entitled to the adjustment permitted under this paragraph (d)(5) if the trust uses stock of a section 1291 fund instead of its other property to satisfy its fixed annual charitable obligation.

**(6) PFIC for part of current shareholder year.**—This paragraph (d)(6) applies if the section 1291 fund first qualified as a PFIC for its taxable year beginning after the first day of the current shareholder year and therefore is a section 1291 fund for only a portion of the current shareholder year. Distributions during the portion of the current shareholder year before the corporation qualified as a PFIC are taken into account for purposes of calculating the nonexcess distribution and the total excess distribution. However, those distributions are taxable under the general rules applicable to distributions by a corporation to its shareholder with respect to its stock, notwithstanding that a ratable portion thereof may be an excess distribution within the meaning of paragraph (c)(1) of this section. The following example illustrates the rule of this paragraph (d)(6).

**Example.**

X, a U.S. person, purchased one share of stock of FC, a corporation, on December 31, 1986. X uses the calendar year as its taxable year; FC's taxable year ends November 30. FC first qualified as a PFIC for its taxable year that began December 1, 1990. X did not elect under section 1295 to treat FC as a QEF. X received a distribution of \$100 in 1987, but did not receive another distribution from FC until August 1, 1990, when FC distributed \$100 per share. On December 13, 1990, FC made another \$100 per share distribution. The August distribution is taken into account for purposes of calculating the nonexcess distribution and total excess distribution for 1990 and the ratable portion of the December 13 distribution that is an excess distribution. However, pursuant to § 1.1291-2(d)(6), the August distribution is not subject to section 1291 notwithstanding that a ratable portion of that distribution is an excess distribution within the meaning of § 1.1291-2(c)(1). The August distribution is included in X's 1990 gross income to the extent provided in section 301(c).

**(e) Taxation of a distribution and effect on earnings and profits.**—

**(1) Nonexcess distribution.**— A nonexcess distribution, as defined in paragraph (c)(2)(i) of this section, is taxable to a shareholder according to the general rules of taxation applicable to distributions made by a corporation to a shareholder with respect to its stock. See, e.g., section 301 and the regulations under that section.

**(2) Excess distribution.**—

**(i) In general.**—To determine the taxation of an excess distribution, the excess distribution is first allocated pro rata to each day in the shareholder's holding period (as determined under § 1.1291-1(h)) of the share of stock with respect to which the distribution was made. The holding period of a share of stock of a section 1291 fund is treated as ending on (and including) the date of each excess distribution solely for purposes of allocating the excess distribution.

**(ii) Allocations included in income.**—The portions of an excess distribution allocated to prePFIC years and the current shareholder year are included in the shareholder's gross income for the current shareholder year as ordinary income.

**(iii) Allocations not included in income.**—The portions of an excess distribution allocated to prior PFIC years are not included in the shareholder's gross income for purposes of this title. These amounts are subject to the deferred tax amount. The deferred tax amount is an additional liability of the shareholder for tax and interest for the current shareholder year. For the calculation of the deferred tax amount and the foreign tax credit that may be taken to reduce the deferred tax amount, see § 1.1291-4 and 1.1291-5.

**(3) Allocation of earnings and profits.**—For purposes of determining the taxation of a nonexcess distribution and calculating the foreign tax credit under § 1.1291-5, the earnings and profits of a section 1291 fund are allocated proportionately between the nonexcess distribution (as defined in paragraph (c)(2)(i) of this section) and the total excess distribution (as defined in paragraph (c)(3) of this section) and reduced (but not below zero) by the amounts thereof.

**(4) Examples.**—The following examples illustrate the operation of paragraphs (c), (d), and (e) of this section.

#### Example 1.

**(i) Facts.** X, a U.S. person, purchased a share of stock of FC, a corporation, on December 31, 1985. FC has been a section 1291 fund since its taxable year that began January 1, 1987. X received distributions from FC of \$50 on December 31, 1987, \$80 on December 31, 1988, and \$150 on December 31, 1989. FC made no distributions in 1986.

**(ii) 1987 excess distribution.** Because X did not receive a distribution from FC during 1986, the only preceding taxable year in its holding period, the total distribution of \$50 is the total excess distribution for 1987. That amount is allocated pro rata over X's two-year holding period, as provided in § 1.1291-2(e)(2)(i): \$25 is allocated to 1986, a prePFIC year, and \$25 to 1987, the current shareholder year. The entire \$50 therefore is included in X's gross income for 1987 as ordinary income.

**(iii) 1988 excess distribution.** In 1988, of the \$80 total distribution, \$31.25 ( $125\% \times \$25 [(0 + \$50) / 2]$ ) is the nonexcess distribution, and is taxable as a corporate distribution as provided in section 301(c). The total excess distribution for 1988, \$48.75 ( $\$80 - \$31.25$ ), is allocated over X's three-year holding period; \$16.25 is allocated to each year. The portions of the excess distribution allocated to the prePFIC year (1986) and the current shareholder year (1988) total \$32.50; that amount is included in X's gross income as ordinary income. The \$16.25 portion of the excess distribution allocated to 1987, the prior PFIC year, is not included in X's gross income, but is subject to the deferred tax amount. Of the \$80 distribution, \$63.75 ( $\$31.25 + \$32.50$ ) is included in X's gross income in 1988.

**(iv) 1989 excess distribution.** In 1989, of the \$150 total distribution, \$47.40 ( $125\% \times \$37.90 [(0 + \$50 + \$63.75) / 3]$ ) is the nonexcess distribution, and is taxable as a corporate distribution as provided in section 301(c). The total excess distribution for 1989, \$102.60 ( $\$150 - \$47.40$ ), is allocated over X's four-year holding period; \$25.65 is allocated to each year. The portions of the excess distribution allocated to the prePFIC year (1986) and the current shareholder year (1989) total \$51.30; that amount is included in X's gross income as ordinary income. The portions of the excess distribution allocated to the prior PFIC years (1987 and 1988) total \$51.30; that amount is not included in X's gross income but is subject to the deferred tax amount. Of the total \$150 distribution, \$98.70 ( $\$47.40 + \$51.30$ ) is included in X's gross income in 1989.

#### Example 2.

**(i) Facts.** X, a U.S. person with a calendar taxable year, purchased 1,000 shares of stock of FC, a corporation, on December 31, 1985. FC has been a section 1291 fund since its taxable year that began January 1, 1987. FC distributed \$100,000 to X on January 31, 1989, and \$200,000 to X on July 31, 1989. X determined the total excess distribution for 1989 to be \$150,000.

**(ii) January 31 distribution.** The excess distribution allocated to the January 31 distribution, which is the ratable portion of the total excess distribution allocated to the \$100,000 distribution made on that date, is \$50,000 [ $\$150,000 \times (\$100,000 / \$300,000)$ ]. For purposes of allocating the \$50,000 excess distribution over X's holding period, X's holding period is treated as ending on (and including) January 31, 1989. X thus held the stock for 1,127 days (365 days in both 1986 and 1987, 366 days in 1988, and 31 days in 1989) at the time of the January 31 distribution. The \$50,000 excess distribution allocated to the January 31 distribution is allocated pro rata to the 1,127 days; approximately \$44.37 is allocated to each day in the holding period. The total allocations to each of the taxable years in X's holding period are as follows:

TAXABLE YEAR	TOTAL ALLOCATION PER YEAR
1986	\$16,193.70
1987	\$16,193.70
1988	\$16,237.70
1989	\$ 1,374.90
Excess distribution:	<u>\$50,000.00</u>

The allocation to 1986, the prePFIC year, and the allocation to 1989, the current shareholder year, are included in X's gross income for 1989 as ordinary income. The allocations to 1987 and 1988, the prior PFIC years, are not included in X's gross income in 1989, but are subject to the deferred tax amount.

**(iii) July 31 distribution.** The excess distribution allocated to the July 31 distribution, which is the ratable portion of the total excess distribution allocated to the distribution made on that date, is \$100,000 [ $\$150,000 \times (\$200,000 / \$300,000)$ ]. For purposes of the allocation of this excess distribution, X's holding period is treated as ending on July 31, 1989. X thus held the stock for 1,308 days (365 days in both 1986 and 1987, 366 days in 1988, and 212 days in 1989) at the time of the July 31 distribution. The \$100,000 excess distribution allocated to the July 31 excess distribution is allocated pro rata to the 1,308 days; approximately \$76.45 is allocated to each day in the holding period. The total allocations of the July 31 excess distribution to each of the taxable years in X's holding period are as follows:

TAXABLE YEAR	TOTAL ALLOCATION PER YEAR
1986	\$ 27,905.20
1987	\$ 27,905.20
1988	\$ 27,981.65
1989	\$ 16,207.95
Excess distribution:	<u>\$100,000.00</u>

The portions of the excess distribution allocated to 1986, the prePFIC year, and to 1989, the current shareholder year, are included as ordinary income in X's gross income for 1989. The portions of the excess distribution allocated to 1987 and 1988, the prior PFIC years, are not included in X's gross income in 1989, but are subject to the deferred tax amount.

### Example 3.

**(i) Facts.** X, a U.S. person, holds six shares of the stock of FC, a section 1291 fund. Two shares were purchased on December 31, 1986 (Block #1), and four shares were purchased on December 31, 1987 (Block #2). On June 30 of 1987 and 1988, FC distributed \$10,000 in respect of each outstanding share of its stock. No portion of the distributions in either year was an excess distribution. On June 30, 1989, FC distributed \$30,000 in respect of each outstanding share of its stock.

**(ii) Calculation of the 1989 excess distributions.** The excess distribution is determined separately for each block of stock.

**(A) Block #1 excess distribution.** The nonexcess distribution for Block #1 is \$25,000 [125% times (\$20,000 + \$20,000) / 2]. The total excess distribution for Block #1 is \$35,000 (\$60,000 – \$25,000).

**(B) Block #2 excess distribution.** The nonexcess distribution for Block #2 is \$50,000 [125% times \$40,000 (the distribution received in the only preceding taxable year included in X's holding period)]. The total excess distribution for Block #2 is \$70,000 (\$120,000 – \$50,000).

**(iii) Block #1 allocation.** The holding period of the Block #1 stock began on January 1, 1987, and ended, for purposes of section 1291, on June 30, 1989, for a total of 912 days (365 days in 1987, 366 days in 1988 and 181 days in 1989). The \$35,000 excess distribution for Block #1 is allocated pro rata to each of the 912 days. Accordingly, approximately \$38.38 is allocated to each day. The total allocations to each of the taxable years in X's holding period are as follows:

TAXABLE YEAR	TOTAL ALLOCATION PER YEAR
1987	\$14,007.70
1988	\$14,046.10
1989	\$ 6,946.20
Excess distribution:	<u>\$35,000.00</u>

The portion of the excess distribution allocated to 1989, the current shareholder year, of \$6,946.20, is included as ordinary income in X's gross income for 1989. The portions of the excess distribution allocated to the prior PFIC years, 1987 and 1988, an aggregate of \$28,053.80, are not included in X's gross income in 1989, but are subject to the deferred tax amount.

**(iv) Block #2 allocation.** The holding period of the Block #2 stock began on January 1, 1988, and ended, for purposes of section 1291, on June 30, 1989, for a total of 547 days (366 days in 1988 and 181 days in 1989). The excess distribution of \$70,000 in respect of the Block #2 stock is allocated pro rata to each of the 547 days. Accordingly, approximately \$127.97 is allocated to each day. The total allocations to each of the taxable years in X's holding period are as follows:

TAXABLE YEAR	TOTAL ALLOCATION PER YEAR
1988	\$46,837.40
1989	\$23,162.60
Excess distribution:	<u>\$70,000.00</u>

The portion of the excess distribution allocated to 1989, the current shareholder year, of \$23,162.60, is included as ordinary income in X's gross income for 1989. The portion of the excess distribution allocated to 1988, \$46,837.40, is not included in X's gross income in 1989, but is subject to the deferred tax amount.

#### **Example 4.**

X is a U.S. person that owns all the stock of FC, a section 1291 fund. At the end of its 1991 taxable year, FC has accumulated earnings and profits, before reduction for distributions made during the year, of \$100, none of which was previously taxed to X under section 951 or 1293. FC distributes \$200 to X on the last day of FC's taxable year. X determines that, of the \$200 distribution, \$50 is a nonexcess distribution, and \$150 is the total excess distribution. FC's earnings and profits of \$100 are allocated proportionately between the nonexcess distribution of \$50 and the excess distribution of \$150, and reduced to zero. Accordingly, \$25 of FC's earnings and profits are allocated to the nonexcess distribution and \$75 of FC's earnings and profits are allocated to the excess distribution. Therefore, \$25 of the \$50 nonexcess distribution is taxable as a dividend under section 301(c)(1), and the remaining \$25 is taxable to the extent provided in section 301(c)(2) and (3). The excess distribution of \$150 is taxable as provided in § 1.1291-2(e)(2).

#### **(f) Indirect distributions.—**

**(1) In general.**—A distribution (as defined in § 1.1291-2(b)) by a section 1291 fund to the actual owner of stock of the section 1291 fund is an indirect distribution if such stock is considered owned by a U.S. person pursuant to § 1.1291-1(b)(8). Except as otherwise provided in this paragraph (f), an indirect shareholder is taxable on the total distribution paid by the section 1291 fund with respect to the stock attributed to the indirect shareholder, as if the indirect shareholder had actually received that amount. The following example illustrates the rule of this paragraph (f)(1).

#### **Example.**

**(i)** X, an S corporation under section 1361, purchased 100 shares of stock of FC, a corporation, on December 31, 1985. FC has been a section 1291 fund since its taxable year that began January 1, 1987. A purchased 10 percent of the stock of X on December 31, 1986, and thus became an indirect shareholder of 10 shares of FC stock. Pursuant to § 1.1291-1(h)(4)(i), A's holding period of the FC stock began on January 1, 1987.

(ii) FC distributed \$5 per share of stock to its shareholders in 1986, and \$8 per share in 1987. In 1987 A is treated as receiving a distribution of \$80 from FC. A did not have a total excess distribution in 1987, the taxable year in which A's holding period of the FC stock began.

(iii) FC distributed \$12 per share in 1988, all of which was paid on June 30, 1988. A therefore is treated as receiving a distribution of \$120 from FC. The nonexcess distribution is \$100 [125% times \$80]. Accordingly, the excess distribution is \$20 (\$120 – \$100). That amount is allocated under § 1.1291-2(e)(2)(i) to each day in A's holding period of the FC stock, which began on January 1, 1987, and ended, for purposes of the allocation of the excess distribution, on June 30, 1988.

## **(2) Pass-through entities.—**

(i) Taxation of trusts, estates, and their beneficiaries.—[Reserved]

(ii) Information reporting.—

**(A) In general.**—A domestic partnership that is a direct or indirect shareholder of a section 1291 fund must separately state the total distribution as a distribution from a section 1291 fund on its federal income tax return (if any) and on any Schedule K-1 filed by the partnership or provided to a partner to which a distributive share of the distribution from the section 1291 fund is allocated pursuant to section 704. In addition, the partnership must state on the Schedule K-1 the information needed by the partner to compute its excess distribution with respect to such total distribution, and provide the name, address and stock basis, where appropriate, of the actual owner of the section 1291 fund that paid the distribution (or whose stock was transferred in an indirect disposition). Any partner receiving such a Schedule K-1 that is itself a domestic partnership is in turn obligated to separately state such information according to the same rules. Similar rules apply to S corporations.

**(B) Trusts and estates.**—[Reserved]

**(3) Coordination with subpart F.**—If, but for this paragraph (f)(3), an indirect distribution would be taxable to an indirect shareholder under this section and also included in the gross income of the indirect shareholder under section 551(a), 951(a)(1), or 1293(a), the indirect distribution is taxable only under this section.

**(4) Exceptions.**—(i) Distribution to sole shareholder.—A distribution by a section 1291 fund (distributing fund) to another section 1291 fund (distributee fund) will not be taxable to the direct shareholder of the distributee fund if—

**(A)** The distributee fund owns all the stock of the distributing fund; and

**(B)** The distributing fund distributed all its earnings and profits in the current shareholder year and annually distributed all its earnings and profits for each year that is included in the shareholder's holding period of the distributing fund.

(ii) Other exceptions.—[Reserved]

**(5) Adjustment to basis.**—The shareholder's adjusted basis of the stock or other property that is owned directly by the shareholder and through which ownership of the section 1291 fund is attributed to the shareholder is increased by the amount of the indirect distribution taxed to the shareholder pursuant to paragraph (f)(1) of this section.

**(6) Treatment of previously taxed amounts.**—The principles of sections 959 and 961 apply with respect to amounts previously taxed under this paragraph (f). The following example illustrates the rule of this paragraph (f)(6).

### **Example.**

USP owns 50% of CFC1. CFC1 and its wholly owned subsidiary, CFC2, are both controlled foreign corporations within the meaning of section 957(a), but are not PFICs. CFC2 owns 10% of the stock of NQF, a PFIC. USP is an indirect shareholder of NQF pursuant to § 1.1291-1(b)(8)(ii). USP has not elected to treat NQF as a QEF. In 1992, NQF distributes \$100 to CFC2, and CFC1 distributes \$100 to USP, but CFC2 makes no distributions to CFC1. At the end of 1992, CFC1 has accumulated earnings and profits of \$200, none of which was previously taxed to USP under section 951(a)(1). USP is taxable pursuant to § 1.1291-2(f) on its pro rata share of the indirect distribution paid to CFC2, and also is taxable on CFC1's distribution pursuant to section 301(c). No part of the distribution by CFC1 to USP is attributable to the amount taxed to USP under § 1.1291-2(f) because no part of the distribution can be attributed to NQF's

distribution to CFC2. [Prop. Reg. § 1.1291-2.]

[Proposed 4-1-92.]

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[BACK TO  
INDEX](#)

[PROPOSED REGULATION § 1.1291-1 TAXATION OF UNITED STATES PERSONS THAT ARE  
SHAREHOLDERS OF SECTION 1291 FUNDS  
PROPOSED REGULATION § 1.1291-3. DISPOSITIONS.](#)