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Part III – Administrative, Procedural, and Miscellaneous

INFORMATION REPORTING WITH RESPECT TO FOREIGN FINANCIAL ASSETS AND CERTAIN INTERESTS IN A PFIC—SUSPENSION OF INFORMATION REPORTING REQUIREMENTS UNTIL THE INTERNAL REVENUE SERVICE RELEASES FORM 8938, STATEMENT OF SPECIFIED FOREIGN FINANCIAL ASSETS, AND REVISED FORM 8621, RETURN BY A SHAREHOLDER OF A PASSIVE FOREIGN INVESTMENT COMPANY OR A QUALIFIED ELECTING FUND

Notice 2011-55

I. Background and Purpose

Section 511 of the Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, 124 Stat. 71, enacted on March 18, 2010 (the HIRE Act), amended the Internal Revenue Code by adding new section 6038D, Information With Respect to Foreign Financial Assets. Section 6038D applies to taxable years beginning after March 18, 2010. Under section 6038D(a), any individual who during the taxable year holds an interest in any specified foreign financial asset is required to attach to his or her income tax return for the taxable year certain required information with respect to each specified foreign financial asset if the aggregate value of all of the individual's specified foreign financial assets exceeds \$50,000.

Section 521 of the HIRE Act further amended the Internal Revenue Code by adding new section 1298(f). Section 1298(f) is effective on March 18, 2010. Under section 1298(f), United States persons who are shareholders of a passive foreign investment company (PFIC) are required to file an annual report containing such information as the Secretary may require. Prior to the enactment of section 1298(f), PFIC shareholders were required to file Form 8621 in certain circumstances. On April 6, 2010, the Department of the Treasury and the Internal Revenue Service (IRS)

published Notice 2010-34, "PFIC Shareholder Reporting Under New Section 1298(f) for Tax Years Beginning Before March 18, 2010," 2010-17 I.R.B. 612, which provided that shareholders of a PFIC that were not otherwise required to file Form 8621 annually prior to the enactment of section 1298(f) would not be required to file an annual report as a result of the addition of section 1298(f) for taxable years beginning before March 18, 2010.

The Department of the Treasury and the IRS intend to issue regulations under sections 6038D and 1298(f), and the IRS intends to release Form 8938, "Statement of Specified Foreign Financial Assets," and a revised Form 8621, "Return by a Shareholder of a Passive Foreign Investment Company or a Qualified Electing Fund," modified to reflect the requirements of section 1298(f). An individual required to report an interest in one or more specified foreign financial assets under section 6038D will be required to attach Form 8938 to the individual's income tax return for the taxable year to report the required information. A PFIC shareholder required to report information under section 1298(f) will be required to attach the revised Form 8621 to the PFIC shareholder's income tax return or information return (e.g., Form 1065, "U.S. Return of Partnership Income") for the taxable year to report the required information.

II. Interim Guidance

Individuals with reporting requirements under section 6038D may have to file an income tax return for a taxable year before the IRS releases Form 8938. This notice suspends the requirement for these individuals to attach Form 8938 to income tax returns that are filed before the release of Form 8938.

Similarly, PFIC shareholders that would not be required to file Form 8621 under the current Instructions to such form may, under section 1298(f), have to file an income tax return or information return (e.g., Form 1065) for a taxable year beginning on or after March 18, 2010, but before the IRS releases revised Form 8621. Pending the release of the revised Form 8621, modified to reflect the requirements of section 1298(f), this notice suspends the section 1298(f) reporting requirement for taxable years beginning on or after March 18, 2010, for PFIC shareholders that are not otherwise required to file Form 8621 as provided in the current Instructions to Form 8621. PFIC shareholders with Form 8621 reporting obligations as provided in the current Instructions to Form 8621 (e.g., upon disposition of stock of a PFIC or with respect to a qualified electing fund under section 1293) must continue to file the current Form 8621 with an income tax or information return filed prior to the release of the revised Form 8621.

Following the release of Form 8938 or revised Form 8621, individuals and PFIC shareholders for which the filing of Form 8938 or 8621 has been suspended under this notice for a taxable year (suspended taxable year) will be required to attach Form 8938, Form 8621, or both, as appropriate, for the suspended taxable year to their next income tax or information return required to be filed with the IRS.

Under section 6501(c)(8), the period of limitation for assessment of tax with respect to periods for which reporting is required under sections 6038D or 1298(f) will not expire before three years after the date on which the IRS receives Forms 8938 or 8621, as appropriate, for the taxable year. A Form 8938 or 8621 filed for a suspended taxable year with a timely filed income tax or information return (taking into account

extensions) as required by this notice will be treated as having been filed on the date that the income tax or information return for the suspended taxable year was filed. The failure to furnish Forms 8938 and 8621 for the suspended taxable year as described in this notice may result in the extension of the period of limitation for the suspended taxable year under section 6501(c)(8), and penalties may apply.

Compliance with sections 6038D and 1298(f) does not relieve a person of the responsibility to file Form TD F 90-22.1, "Report of Foreign Bank and Financial Accounts," (FBAR) if the FBAR is otherwise required to be filed.

The principal author of this notice is Joseph Henderson of the Office of the Associate Chief Counsel (International). For further information regarding this notice as it relates to section 6038D, please contact Mr. Henderson at (202) 622-3880 (not a toll-free call). For further information regarding this notice as it relates to section 1298(f), please contact Susan E. Massey at (202) 622-3840 (not a toll-free call).