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# U.S. Tax PFIC Issues

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# What is the big deal?

- Highly punitive to U.S. shareholders
- Gains and excess distributions caught
- Daily allocation, prior PFIC years taxed at the highest rate
- Interest charges on top
- Total tax rate/interest can easily exceed 50%
- Worse than Subpart F but subordinates to it

# Why such rules?

- Perceived U.S. tax abuse
- Hiding asset and income offshore
- Tax avoidance motive presumed
- Rules intended to “equalize” and to “level the playing field”
- Tax fiction created through allocation

# What is a PFIC?

- A non-U.S. company that meets *either* test:
  - Income test
    - 75% or more passive gross income
    - Dividends, interest, rents, royalties, certain gains
  - Asset test
    - 50% or more passive assets
    - How about cash?
- 25% look through rule
- Tiered PFICs

# Possible PFICs

- Cdn junior mining companies
- Cdn start ups
- Cdn investment companies
- Cdn mutual funds

# QEF Election

- Qualified Electing Fund (QEF)
  - Pro rata pick up of current earnings and cap gain
  - Income inclusion without distribution
  - Avoids highest tax rate and penalty interest

# QEF Election

- U.S. tax basis bump
- Ultimate gain may qualify as cap gain
- Need annual information statement from PFIC to make the QEF election
- Complex U.S. tax E&P calculations
- Bigger Cdn MFs and pubcos are on line

# Mark to Market Election

- Stock must be “regularly traded”
- Marked to market at year end
- Gains not treated as cap gain
- Losses only against previous gain



# Mark to Market Election

- U.S. tax basis bump
- Gain on actual sale generally treated as ordinary income
- Avoid highest tax rate and penalty interest

# Form 8621

- To report PFIC transactions
- To make either election
- Estimated prep time: 20 hours 34 minutes
- No penalty for not filing?

# Closing Comments

- Renewed IRS interest
- Make an election!



Questions?