



IN CASE YOU MISSED IT – January/February 2026

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Almost every day, federal and state courts issue opinions that affect taxpayers. The IRS and state taxing authorities also publish guidance on myriad topics.

Each month, this column will review a selection of recent court cases or guidance that tax professionals should know about when advising their clients and preparing tax returns.

For more extensive detail on any of these items, please feel free to reach out to the authors.

Rev. Proc. 2026-10 – Help Is Available If You Forgot to Make a QEF Election

The IRS recently released Revenue Procedure 2026-10, delivering long-awaited clarity for US taxpayers seeking to make retroactive Qualified Electing Fund (QEF) elections for Passive Foreign Investment Companies (PFIC). The new guidance, effective for ruling requests received on or after Jan. 20, 2026, standardizes the process for securing IRS consent to make a late QEF election and introduces more detailed evidentiary and procedural requirements.

Revenue Procedure 2026-10 supplements the general PLR procedures in [Rev. Proc. 2026-1](#) and focuses specifically on retroactive elections under [IRC section 1295\(b\)](#) and [Treas. Reg. section 1.1295-3\(f\)](#). It confirms that Treas. Reg. section 1.1295-3 provides the *exclusive paths* for retroactive QEF elections.

Understanding PFICs and Their Tax Consequences

The US PFIC regime's anti-deferral rules were designed to prevent US shareholders from using foreign corporations to defer or convert otherwise taxable income.

A foreign corporation is a PFIC if more than 75% of its gross income is passive income (the income test), or if more than 50% of its assets produce passive income (the asset test). [I.R.C. section 1297](#). These tests are applied annually and independently, so failing either test in any year creates PFIC status. Once a foreign corporation fails a PFIC test, it continues to be treated as a PFIC in subsequent years even if it would not fail the tests in a later year—hence the infamous “once a PFIC, always a PFIC” rule. The consequences of falling under the default

PFIC regime are onerous. This regime 1) taxes excess distributions at the highest marginal rate; 2) applies interest charges; and 3) prevents capital-gains treatment on dispositions.

The QEF Election: Pedigreed vs. Unpedigreed

To avoid this harsh treatment, taxpayers can make a Qualified Electing Fund election (QEF election) under IRC section 1295(a). The election applies to that year and all subsequent years. In general, the due date for a QEF election is the due date of the tax return for the year in which the interest in the foreign corporation is acquired. Once a QEF election is made, the taxpayer simply includes its pro rata share of PFIC earnings on a current basis and is not subject to interest charges or recharacterization of income.

The QEF election generally must be made in the first year the taxpayer owns the PFIC shares. A timely election creates a pedigreed QEF, avoiding the excess distribution rules and the “once a PFIC, always a PFIC” rule. The shareholder would only have to include the foreign corporation's income for later years in which it would otherwise have been a PFIC. If it does not fail the PFIC test in a later year, no current inclusion is required.

Conversely, an untimely election creates an unpedigreed QEF, and the stock continues to be treated as PFIC stock every year, even in years the corporation would not otherwise fail the PFIC tests. In that case, the taxpayer remains subject to the default PFIC regime for the period prior to the QEF election, and following the QEF election, the taxpayer does not get the full tax benefits of being a QEF, namely, avoiding the once a PFIC always a PFIC treatment.

Retroactive QEF Elections Under Rev. Proc. 2026-10

A taxpayer that misses the deadline to elect to be a QEF must request permission to submit a retroactive election in order to be a pedigreed QEF. The new Revenue Procedure outlines the methods that must be used to make a retroactive election.

Method 1: Statement Requirement Method

In order to do so, a PFIC shareholder must have: 1) reasonably believed as of the election due date that the corporation was not a PFIC; 2) filed a protective statement; and 3) complied with all of the terms and conditions of the protective statement.

Method 2: Request for IRS Consent Method

If the taxpayer cannot satisfy these requirements, the Revenue Procedure provides for a second alternative method, pursuant to which the shareholder may request IRS consent to make a retroactive election. To be granted the requested relief, the taxpayer must show reasonable reliance on a qualified tax professional, the relief must not prejudice the government, the request

must be made before an audit is commenced, and certain other procedural requirements must be met.

Treas. Reg. section 1.1295-3(f)(2) sets forth the rules for determining whether a PFIC shareholder reasonably relied on a qualified tax professional. It makes clear that a PFIC shareholder is deemed to have reasonably relied on a qualified tax professional only if the PFIC shareholder reasonably relied on a qualified tax professional who failed to identify the foreign corporation as a PFIC or failed to advise the PFIC shareholder of the consequences of making, or failing to make, a QEF election. For this purpose, a tax professional employee of the PFIC shareholder will be sufficient. Merely not knowing the PFIC rules is insufficient to satisfy the reliance prong.

Documentation and Non-Prejudice Requirements

The ruling request must include a detailed affidavit from the taxpayer signed under penalties of perjury describing the events leading to the failure, the discovery of the failure, and the engagement and responsibilities of the qualified tax professional. Signed affidavits are also required of the qualified tax professional upon whose advice the taxpayer relied and any other tax accountants or lawyers with knowledge of the facts and circumstances that led to the failure to make a timely election.

Another requirement to obtain a retroactive QEF election is to provide sufficient support for the IRS to determine that granting relief will not prejudice the United States, such as by eliminating taxable income or manipulating timing. Notably, the Rev. Proc. indicates a willingness to accept alternative documentation to establish non-prejudice.

Generally, a QEF election requires providing a PFIC Annual Information Statement under Treas. Reg. section 1.1295-1(g)(1). The statement generally includes the taxpayer's pro rata share of the PFIC's ordinary earnings for the year; the shareholder's pro rata share of the PFIC's net capital gain; a statement that the PFIC will allow reasonable access to its books and records necessary to verify these amounts; and confirmation that the PFIC is in fact a PFIC for the taxable year.

Historically, the IRS rarely accepts substitute documentation. However, Rev. Proc. 2026-10 allows a taxpayer to produce alternative information where Annual Information Statements cannot be obtained for the prior years for which the taxpayer is seeking to make a retroactive QEF, potentially signaling a shift toward more flexible compliance expectations.

User Fees and Bundling Provisions

All retroactive QEF election requests must be accompanied by the appropriate user fee set forth in Rev. Proc. 2026-1. The IRS has discretion to reject requests submitted without full payment. A separate fee applies to each PFIC in which the taxpayer is a shareholder.

Recognizing that many investment structures hold multiple similar PFICs, Rev. Proc. 2026-10 permits taxpayers to bundle substantially identical PFICs into a single submission, with reduced fees for the additional PFICs. Additionally, the IRS will generally treat multiple retroactive QEF election ruling requests submitted in a single submission as substantially identical rulings if the facts and circumstances that led to the failure to make the elections and the discovery of such failure are substantially similar, and will do so even in cases where the stock of each PFIC may have been acquired in different years. This can arise when a new tax advisor contemporaneously discovers the PFIC status of multiple foreign corporations owned by a taxpayer whose prior advisor had failed to identify them as such. The IRS has agreed to view this discovery as evidence that all of the failures were based on substantially similar facts and circumstances and allow for a reduced user fee for the additional rulings.

Takeaway

Many filing requirements arise when investing in foreign entities. Tax advisors need to consider the necessary elections that might be needed on the tax return filed for the first year of the investment. While relief is sometimes available, there are many hoops that you have to jump through to correct any errors.

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