



New Rules Significantly Impact Disclosure Obligations of Certain Wholly Owned Foreign Subsidiaries

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Foreign-held domestic disregarded entities and their owners will be subject to increased disclosure under final U.S. Treasury Regulations which require a domestic disregarded entity wholly owned by one foreign person (an “Affected Entity”) to obtain an employer identification number (“EIN”) and comply with tax reporting and record maintenance requirements under Section 6038A of the Internal Revenue Code of 1986, as amended (the “Code”). The new rules generally are effective for taxable years beginning on or after January 1, 2017 and are generally consistent with Proposed Regulations issued in May.

Employer Identification Number

An Affected Entity now must obtain an EIN from the Internal Revenue Service (“IRS”). In order to obtain an EIN, an entity must disclose the identity of a “responsible party.” The responsible party is generally an individual who controls, manages, or directs the entity and the disposition of its funds and assets. Under current rules an Affected Entity is required to disclose the Social Security number, individual taxpayer identification number, or EIN of its responsible party and therefore the responsible party of an Affected Entity may be required to personally obtain an identifying number.

Under current rules, Affected Entities are not legally required to obtain an EIN. Certain commercial factors may nonetheless compel an Affected Entity to obtain an EIN. For example, a disregarded entity may be required to obtain an EIN in order to open a bank account in the United States.

Reporting Requirements

An Affected Entity must obtain an EIN to comply with IRS Form 5472 filing requirements.

Code Section 6038A imposes IRS Form 5472 filing requirements on domestic corporations that are at least 25 percent foreign owned (“Foreign Owned Corporations”). The final regulations provide that an Affected Entity is treated as an entity separate from its owner and classified as a Foreign Owned Corporation for purposes of Code Section 6038A.

An Affected Entity must file IRS Form 5472 to disclose contributions, distributions, and certain other transactions between it and its foreign owner or persons related to the foreign owner.



Recordkeeping Requirements

Foreign Owned Corporations are required to maintain records sufficient to establish any Federal income tax liability for purposes of Code Section 6038A. Under the final regulations an Affected Entity is a Foreign Owned Corporation and is required to maintain such records.



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