

Domestic Single-Member LLCs

Foreign related party transactions and filing obligations

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Why Single Member LLCs?

- ▶ Pass Through Taxation
 - ▶ Profits taxed directly to the owner(s) – If no U.S. owner and no U.S. income, no U.S. tax
 - ▶ “Disregarded entities”
 - ▶ No requirement to file a tax return (but remember FBARs)
- ▶ Limited Liability
 - ▶ “Piercing corporate veil”

T. Reg. 301.7701-2(c)(2)(vi)

- ▶ Previously “disregarded” LLCs, if
 - ▶ Domestic ; and
 - ▶ One foreign person has **direct or indirect sole ownership** of the entity
- ▶ No change in tax but LLCs are treated as corporations for purposes of IRC § 6038A.

Direct and Indirect sole ownership

- ▶ Direct: 100% owned by foreign person
 - ▶ Person – Can be an individual, entity or trust, §7701 (a) (30)
- ▶ Indirect: “Ownership by one person entirely through one or more other entities disregarded as entities separate from their owners or through one or more grantor trusts, regardless of whether any such disregarded entity or grantor trust is domestic or foreign.”

Treated as a Corporation under §6038A

“Information with respect to certain foreign-owned corporations”

- ▶ Due to this new regulation, the U.S. LLC is treated like a U.S. corporation, and U.S. corporations with this type of ownership structure:
 - ▶ Are required to report information on **related parties** with which the LLC has **transactions** with during the tax year
 - ▶ Must maintain records of this information
- ▶ Penalties
 - ▶ \$10,000 for failing to report or maintain records or substantially incomplete report
 - ▶ \$10,000 if failure continues more than 90 days after IRS notification, and additional \$10,000 penalties for each additional 30-day period thereafter

Related Party: T. Reg. 1.6038A-1 (d)

- ▶ Any direct or indirect 25% foreign shareholder of the LLC
- ▶ Any person who is related to the LLC within the meaning of 267(b) or 707(b)(1)
- ▶ **Any person who is related to a 25% foreign shareholder of the LLC**
- ▶ Any other person who is related to the LLC within the meaning of IRC 482 and the related regulations

Transactions: T. Reg. 1.6038A-2(b)(3) and (b)(4)

- ▶ Sales, Assignments, Leases, Licenses, Loans, Advances, **Contributions**, and Performance of any services for the benefit of, or on behalf of, another taxpayer
- ▶ **Any other transfer of any interest** in or a right to use any property (tangible or intangible, real or personal) or money, however such transaction is effected, and whether or not the terms of such transaction are formally documented.
- ▶ Such as amounts paid or received **in connection with** the formation, dissolution, acquisition and disposition of the entity, including contributions to and distributions from the entity.

Purpose of New Regulation

- ▶ Intended to provide IRS with improved access to information to better satisfy U.S. obligations under U.S. tax treaties and tax information exchange agreements
 - ▶ Shareholders and ultimate beneficial owners
- ▶ Direction under Obama vs. Trump
 - ▶ Expectations for use of the information derived from the regulation are in part based on the political landscape

Form 5472

Form 5472 (Rev. December 2012)		Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business (Under Sections 6038A and 6038C of the Internal Revenue Code) ▶ Information about Form 5472 and its separate instructions is at www.irs.gov/form5472 .		OMB No. 1545-0805	
Department of the Treasury Internal Revenue Service		For tax year of the reporting corporation beginning _____, _____, and ending _____, _____			
Note. Enter all information in English and money items in U.S. dollars.					
Part I Reporting Corporation (see instructions). All reporting corporations must complete Part I.					
1a Name of reporting corporation			1b Employer identification number		
Number, street, and room or suite no. (if a P.O. box, see instructions)			1c Total assets		
City or town, state, and ZIP code (if a foreign address, see instructions)			\$		
1d Principal business activity ▶			1e Principal business activity code ▶		
1f Total value of gross payments made or received (see instructions) reported on this Form 5472		1g Total number of Forms 5472 filed for the tax year	1h Total value of gross payments made or received (see instructions) reported on all Forms 5472		
\$		\$	\$		
1i Check here if this is a consolidated filing of Form 5472 ▶ <input type="checkbox"/>	1j Country of incorporation	1k Country(ies) under whose laws the reporting corporation files an income tax return as a resident		1l Principal country(ies) where business is conducted	
2 Check here if, at any time during the tax year, any foreign person owned, directly or indirectly, at least 50% of (a) the total voting power of all classes of the stock of the reporting corporation entitled to vote, or (b) the total value of all classes of stock of the reporting corporation ▶ <input type="checkbox"/>					
Part II 25% Foreign Shareholder (see instructions)					
1a Name and address of direct 25% foreign shareholder			1b(1) U.S. identifying number, if any		
			1b(2) Reference ID number (see instructions)		
1c Principal country(ies) where business is conducted	1d Country of citizenship, organization, or incorporation	1e Country(ies) under whose laws the direct 25% foreign shareholder files an income tax return as a resident			
2a Name and address of direct 25% foreign shareholder			2b(1) U.S. identifying number, if any		
			2b(2) Reference ID number (see instructions)		
2c Principal country(ies) where business is conducted	2d Country of citizenship, organization, or incorporation	2e Country(ies) under whose laws the direct 25% foreign shareholder files an income tax return as a resident			
3a Name and address of ultimate indirect 25% foreign shareholder			3b(1) U.S. identifying number, if any		
			3b(2) Reference ID number (see instructions)		
3c Principal country(ies) where business is conducted	3d Country of citizenship, organization, or incorporation	3e Country(ies) under whose laws the ultimate indirect 25% foreign shareholder files an income tax return as a resident			
4a Name and address of ultimate indirect 25% foreign shareholder			4b(1) U.S. identifying number, if any		
			4b(2) Reference ID number (see instructions)		
4c Principal country(ies) where business is conducted	4d Country of citizenship, organization, or incorporation	4e Country(ies) under whose laws the ultimate indirect 25% foreign shareholder files an income tax return as a resident			

Part III Related Party (see instructions)
Check applicable box: Is the related party a foreign person or U.S. person?
All reporting corporations must complete this question and the rest of Part III.

1a Name and address of related party		1b(1) U.S. identifying number, if any
		1b(2) Reference ID number (see instructions)
1c Principal business activity ▶	1d Principal business activity code ▶	
1e Relationship—Check boxes that apply: <input type="checkbox"/> Related to reporting corporation <input type="checkbox"/> Related to 25% foreign shareholder <input type="checkbox"/> 25% foreign shareholder		
1f Principal country(ies) where business is conducted	1g Country(ies) under whose laws the related party files an income tax return as a resident	

Part IV Monetary Transactions Between Reporting Corporations and Foreign Related Party (see instructions)
Caution: Part IV must be completed if the "foreign person" box is checked in the heading for Part III.
If estimates are used, check here

1	Sales of stock in trade (inventory)	1
2	Sales of tangible property other than stock in trade	2
3	Platform contribution transaction payments received	3
4	Cost sharing transaction payments received	4
5a	Rents received (for other than intangible property rights)	5a
b	Royalties received (for other than intangible property rights)	5b
6	Sales, leases, licenses, etc., of intangible property rights (e.g., patents, trademarks, secret formulas)	6
7	Consideration received for technical, managerial, engineering, construction, scientific, or like services	7
8	Commissions received	8
9	Amounts borrowed (see instructions) a Beginning balance _____ b Ending balance or monthly average ▶	9b
10	Interest received	10
11	Premiums received for insurance or reinsurance	11
12	Other amounts received (see instructions)	12
13	Total. Combine amounts on lines 1 through 12	13
14	Purchases of stock in trade (inventory)	14
15	Purchases of tangible property other than stock in trade	15
16	Platform contribution transaction payments paid	16
17	Cost sharing transaction payments paid	17
18a	Rents paid (for other than intangible property rights)	18a
b	Royalties paid (for other than intangible property rights)	18b
19	Purchases, leases, licenses, etc., of intangible property rights (e.g., patents, trademarks, secret formulas)	19
20	Consideration paid for technical, managerial, engineering, construction, scientific, or like services	20
21	Commissions paid	21
22	Amounts loaned (see instructions) a Beginning balance _____ b Ending balance or monthly average ▶	22b
23	Interest paid	23
24	Premiums paid for insurance or reinsurance	24
25	Other amounts paid (see instructions)	25
26	Total. Combine amounts on lines 14 through 25	26

Part V Nonmonetary and Less-Than-Full Consideration Transactions Between the Reporting Corporation and the Foreign Related Party (see instructions)
Describe these transactions on an attached separate sheet and check here.

Part VI Additional Information

All reporting corporations must complete Part VI.

1	Does the reporting corporation import goods from a foreign related party?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2a	If "Yes," is the basis or inventory cost of the goods valued at greater than the customs value of the imported goods?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	If "No," do not complete b and c below.		
b	If "Yes," attach a statement explaining the reason or reasons for such difference.		
c	If the answers to questions 1 and 2a are "Yes," were the documents used to support this treatment of the imported goods in existence and available in the United States at the time of filing Form 5472?		
		<input type="checkbox"/> Yes	<input type="checkbox"/> No
3	During the tax year, was the foreign parent corporation a participant in any cost sharing arrangement?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4	During the course of the tax year, did the foreign parent corporation become a participant in any cost sharing arrangement?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Form 5472

Page 2

10

December 13, 2017

- ▶ Applicable date in which these regulations come into effect
- ▶ Treas. Regulation 301.7701-2(e)(9) says “this section applies to tax years beginning after December 31, 2016 and ending on or after December 13, 2017.”
- ▶ If single member becomes multiple member today: the single member LLC tax year would begin after Dec. 31, 2016 but it would end on the day it is no longer a single member LLC since it would then be a partnership. Therefore the single member tax year would **end** before December 13, 2017. If it becomes multiple member after December 13, 2017 the transaction making it multiple member would need to be reported.
- ▶ It is expected that the Form 5472 Instructions will change next year