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

OMB No. 1545-0805

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.

Department of the Treasury
Internal Revenue Service

Note. Enter all information in English and money items in U.S. dollars.

| Ρ | Reporting Corpora | ation (see inst | ructions). All repor | rting corpor | ations must co | mplete Part I. |
|----|---|-----------------------|---------------------------|------------------|-----------------------|--|
| 1a | Name of reporting corporation | • | • | | | 1b Employer identification number |
| | | | | | | |
| | Number, street, and room or suit | te no. (if a P.O. bo | x, see instructions) | | | 1c Total assets |
| | | | | | | |
| | City or town, state, and ZIP code | e (if a foreign addre | ess, see instructions) | | | |
| | | | | | | \$ |
| 1d | Principal business activity ▶ | | | | | iness activity code > |
| 1f | Total value of gross payments m | | 1g Total number of | | | f gross payments made or received (|
| | (see instructions) reported on th | is Form 5472 | filed for the tax y | ear | instructions) | reported on all Forms 5472 |
| \$ | | | | | \$ | |
| 1i | Check here if this is a 1j Coun | | 1k Country(ies) under | | | 11 Principal country(ies) where |
| | concendence ming or | poration | corporation files a | an income tax re | eturn as a resident | business is conducted |
| | Form 5472 ▶ □ | | | | | |
| 2 | Check here if, at any time during | the tax year, any f | oreign person owned, | directly or ind | irectly, at least 509 | % of (a) the total voting power of all |
| | classes of the stock of the report | ting corporation er | ntitled to vote, or (b) t | the total value | of all classes of st | ock of the reporting corporation 🕨 🗌 |
| | rt II 25% Foreign Shar | eholder (see i | nstructions) | | | |
| 1a | Name and address of direct 25% | 6 foreign sharehold | ier | | | 1b(1) U.S. identifying number, if any |
| | | | | | | |
| | | | | | | 1b(2) Reference ID number (see |
| | | | | | | instructions) |
| | | | | | | |
| 1c | Principal country(ies) where | 1d Country of ci | | | | aws the direct 25% foreign shareholds |
| | business is conducted | organization, | or incorporation | files an ir | ncome tax return a | s a resident |
| | | | | | | |
| 2a | Name and address of direct 25% | 6 foreign sharehold | der | • | | 2b(1) U.S. identifying number, if any |
| | | | | | | |
| | | | | | | 2b(2) Reference ID number (see |
| | | | | | | instructions) |
| | | | | | | |
| 2c | Principal country(ies) where | 2d Country of ci | | | | aws the direct 25% foreign sharehold |
| | business is conducted | organization, | or incorporation | files an ir | ncome tax return a | s a resident |
| | | | | | | |
| 3a | Name and address of ultimate in | direct 25% foreign | shareholder | | | 3b(1) U.S. identifying number, if any |
| | | | | | | |
| | | | | | | 3b(2) Reference ID number (see instructions) |
| | | | | | | instructions) |
| | | | | | | |
| 3с | Principal country(ies) where business is conducted | 3d Country of ci | | | | aws the ultimate indirect 25% foreign |
| | business is conducted | organization, | or incorporation | snarenoi | der files an income | tax return as a resident |
| | | | | | | |
| 4a | Name and address of ultimate in | direct 25% foreign | shareholder | | | 4b(1) U.S. identifying number, if any |
| | | | | | | |
| | | | | | | 4b(2) Reference ID number (see |
| | | | | | | instructions) |
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| 4c | Principal country(ies) where | 4d Country of ci | | | | aws the ultimate indirect 25% foreign |
| | business is conducted | organization, | or incorporation | sharehol | der tiles an income | tax return as a resident |

Form 5472

| Part III Related Party [see instructions] |
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| 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 ▶ |
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| the Foreign Related Party (see instructions) Describe these transactions on an attached separate sheet and check here. Ref VI Additional Information All reporting corporations must complete Part VI. 1 Does the reporting corporation import goods from a foreign related party? |
| Describe these transactions on an attached separate sheet and check here. Additional Information All reporting corporations must complete Part VI. Does the reporting corporation import goods from a foreign related party? |
| All reporting corporations must complete Part VI. 1 Does the reporting corporation import goods from a foreign related party? |
| 1 Does the reporting corporation import goods from a foreign related party? |
| 2a If "Yes," is the basis or inventory cost of the goods valued at greater than the customs value of the imported goods? |
| |
| If "No," do not complete b and a below. |
| |
| b If "Yes," attach a statement explaining the reason or reasons for such difference. |
| o 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 \$4727 |
| 3 During the tax year, was the foreign parent corporation a participant in any cost sharing arrangement? |
| 4 During the course of the tax year, did the foreign parent corporation become a participant in any cost sharing arrangement? |
| Form 5472 (Rev. 12-201 |

Page 2

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