

New tax return reporting obligation in the USA for LLC's owned by foreign investors (including Brazilians)



TTN CONFERENCE 2016

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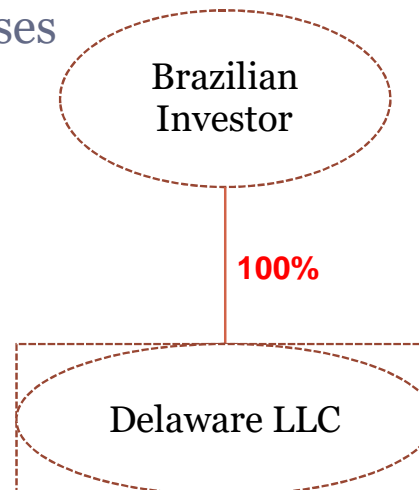
DEZ/2017

Introduction

New tax return reporting obligation in the USA for LLC's owned by foreign investors (including Brazilians)



- 📁 Historically (**BEFORE CHANGE**) a U.S. LLC (or foreign equivalent) that has a single owner and is not classified as a corporation for U.S. Tax Purposes is generally not relevant and treated a Disregarded Entity (DE)
 - ◆ Generally not subject to file U.S. Tax Returns
 - 📁 Except: U.S. trade or business or has certain types of US-source income
 - ◆ Generally do not need to obtain EIN (TAX ID) with the IRS
 - 📁 Expect for banking purposes
 - ◆ Need to file FBAR
 - 📁 Example:



New Situation

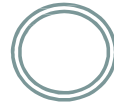
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- ◆ New IRS Regulation (TD 9796) treat a domestic disregarded entity (DE) wholly owned by a foreign person as a domestic corporation separate from its owner for the limited purposes of the reporting, record maintenance and associated compliance requirements that apply to 25 % foreign-owned domestic corporations under IRC Sec. 6038A
 - ◆ Direct or Indirect Ownership
 - ☐ Indirect Ownership: 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
 - ◆ Objective: increase the U.S. compliance with international standards of transparency and exchange of information for tax purposes and will strengthen the enforcement of U.S. tax laws.
 - ◆ Applicable Date: **Effective for Taxable Years on/after December 13, 2017**
 - ☐ Tax Returns due in **2018**

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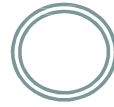


◆ General Tax Reporting Implications:

- 📁 DE must file IRS Form 5472
- 📁 Must maintain records and describe “Reportable Transactions”
 - ◆ Ex: sale, assignment, lease, license, loan, advance, contribution or other transfer of any interest in or a right to use any property or money, performance of any services for the benefit of, or on behalf of, another taxpayer
- 📁 Need to obtain EIN (Tax ID) with the IRS
- 📁 Identify Beneficial Owner
- 📁 Determine Responsible Party before the IRS
 - ◆ Need to Obtain ITIN (Individual) or EIN (Entity)
- 📁 Etc.

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◆ General Tax Reporting Implications:

📁 Form 5472

- ◆ Penalties for fail to file or fail to maintain adequate records
 - 📁 Generally USD 10,000 per entity for failing to file Form 5472
- ◆ Must keep books of accounts or records
- ◆ Narrow Exceptions
- ◆ Generally Calendar Year (ends Dec-31)

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)

OMB No. 1545-0805

► **Information about Form 5472 and its separate instructions is at www.irs.gov/form5472.**

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.

<p>1a Name and address of related party</p>	<p>1b(1) U.S. identifying number, if any</p> <hr/> <p>1b(2) Reference ID number (see instructions)</p>
<p>1c Principal business activity ▶</p>	<p>1d Principal business activity code ▶</p>
<p>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</p>	
<p>1f Principal country(ies) where business is conducted</p>	<p>1g Country(ies) under whose laws the related party files an income tax return as a resident</p>

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

Part V Nonmonetary and Less-Than-Full Consideration Transactions Between the Reporting Corporation and the Foreign Related Party (see instructions)

24 Premiums paid for insurance or reinsurance

25 Other amounts paid (see instructions) Describe these transactions on an attached separate sheet and check here.

Part VI Additional Information

26 **Total** All reporting corporations must complete Part VI.

1 Does the reporting corporation import goods from a foreign related party? Yes No

2a If “Yes,” is the basis or inventory cost of the goods valued at greater than the customs value of the imported goods? Yes 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? Yes No

3 Yes No

4 During the tax year, was the foreign parent corporation a participant in any cost sharing arrangement? Yes No

Thank You!



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