



TaxNewsFlash

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Final regulations: Reporting obligations of foreign-owned disregarded entity

The U.S. Treasury Department and IRS today released for publication in the Federal Register final regulations (T.D. 9796) that treat a domestic disregarded entity, wholly owned by a foreign person, as a domestic corporation for the limited purposes of the reporting and recordkeeping requirements under section 6038A.

The [final regulations](#) [PDF 206 KB] amend existing regulations under section 6038A and section 7701, and will require affected domestic disregarded entities to file Form 5472 at such time and in such manner as the IRS Commissioner may prescribe in forms or instructions.

Overview

Today's release finalizes regulations that were proposed in May 2016 with "a limited number of changes" including:

- A clarification that other exceptions in the previously existing regulations will **not** apply to prevent filing of Form 5472 under the new final regulations
- The addition of rules addressing the tax year of domestic disregarded entities that now will be required to report
- A revision to the effective date provision of the proposed regulations, for the new reporting and recordkeeping requirements

Background

Regulations proposed in May 2016 provided that domestic disregarded entities—deemed to be foreign-owned domestic corporations—would be required:

- To file Form 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engage in a U.S. Trade or Business (Under Sections 6038A and 6038C of the Internal Revenue Code)*, and identify an expanded number of “reportable transactions” between the entity and its foreign owner or other foreign related parties
- To maintain records establishing the accuracy of the information return and the correct U.S. tax treatment of the transactions
- To obtain an employer identification number (EIN) by filing Form SS-4, and thus would be required to report responsible party information to the U.S. government

Final regulations

The preamble to today’s final regulations and the text of the final regulations clarify that:

- The exceptions to the reporting requirements under Reg. section 1.6038A-2(e)(3) and (4) with respect to small corporations and de minimis transactions are revised so as **not** to apply to a domestic disregarded entity that is wholly owned by a foreign person.
- To facilitate compliance with the reporting requirements and filing of Form 5472, domestic disregarded entities will have the same tax year as their foreign owner if the foreign owner has a U.S. return filing obligation; however, if a foreign owner has no U.S. return filing obligation, the tax year of a domestic disregarded entity will be the calendar year.

The final regulations also provide that they apply to tax years of entities beginning on or after January 1, 2017, and ending on or after December 31, 2017 (whereas the proposed regulations would have applied to tax years ending on or after the date that was 12 months after the date of publication of the final regulations in the Federal Register, without regard to the date on which the tax year began).

The final regulations will be published in the Federal Register on December 13, 2016.

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