

AN ALERT FROM THE BDO INTERNATIONAL TAX PRACTICE

BDO KNOWS: INTERNATIONAL TAXATION



► SUBJECT

IRS ISSUES FINAL AND PROPOSED REGULATIONS TO EASE FORM 5472 FILING REQUIREMENTS

► AFFECTING

Certain 25-percent foreign-owned domestic corporations and certain foreign corporations that are engaged in a trade or business in the United States that are required to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.

► BACKGROUND

When certain reportable transactions occur during the taxable year between a foreign or domestic related party, sections 6038A and 6038C generally require that certain 25-percent foreign-owned domestic corporations and certain foreign corporations engaged in a trade or business in the United States report such transactions on Form 5472.

Until recently, a filer was required to file Form 5472 with its income tax return for the taxable year by the due date (including extensions) of that return. However, if a filer's income tax return was not filed when due, a timely filed Form 5472 was required to be filed separately with the service center where the filer's income tax return is due. Upon filing its income tax return, the filer attached a copy of the previously filed Form 5472.

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► DETAILS

FINAL REGULATIONS

On June 10, 2011, the Internal Revenue Service and Treasury Department published temporary regulations (T.D. 9529, 76 Fed. Reg. 33997) (the “2011 temporary regulations”) under sections 6038A and 6038C. On the same day, a notice of proposed rulemaking (REG-101352-11, 76 Fed. Reg. 34019) (the “2011 proposed regulations”) was published by cross-reference to the 2011 temporary regulations. The 2011 temporary regulations provided that duplicate filing of Form 5472 will no longer be required regardless of whether the reporting corporation files a paper or an electronic income tax return. The regulations implemented this change by removing the duplicate filing requirement and the electronic filing provision from previous regulations. As a result, the only remaining provision in the regulations for filing Form 5472 separately from the filer’s income tax return is the untimely filed return provision contained in Temp. Reg. § 1.6038A-2T(e) (which was a part of the 2011 temporary regulations being finalized contemporaneously with the proposal of these regulations - see below).

In the *Federal Register* for June 6, 2014, the Service and Treasury adopted the 2011 proposed regulations without substantive change as final regulations and removed the corresponding temporary regulations (T.D. 9667, 79 Fed. Reg. 32644).

PROPOSED REGULATIONS

Also on June 6, 2014, the Service issued proposed regulations (REG-114942-14, 79 Fed. Reg. 32687) that would remove a current provision requiring timely filing of Form 5472 separately from an untimely filed income tax return. As such, the proposed regulations would require Form 5472 to be filed in all cases with the filer’s income tax return for the taxable year by the due date (including extensions) of that return.

The Service and Treasury cite as the basis for the proposed regulations their belief that the untimely filed return provision of Treas. Reg. § 1.6038A-2(e) (as finalized this month) is not conducive to efficient tax administration. Specifically, the Service notes that the filing method for Form 5472 should not differ from the method applicable to taxpayers with similar international reporting requirements, such as taxpayers required to file Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, or Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships. Forms 5471 and 8865 must be filed with the taxpayer’s income tax return for the taxable year by the due date (including extensions) of the return. There is no provision equivalent to the untimely filed return provision of Treas. Reg. § 1.6038A-2(e) that would require or permit separate filing of Form 5471 or 8865.

HOW BDO CAN HELP

Due to increased scrutiny and a severe penalty regime with respect to certain international reporting requirements, it is important for foreign-owned domestic corporations and certain foreign corporations engaged in a trade or business in the United States to review and understand the filing requirements related to any international operations. BDO can help you review these requirements and prepare and submit any necessary informational forms.

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