



Disregarded entities required to comply in new proposed regulations to section 6038A

The IRS has released proposed regulations expanding the scope of business entities that must comply with section 6038A to include previously disregarded entities. The proposed regulations would strengthen rules requiring informational reporting and record maintenance. Section 6038A subjects domestic corporations that are 25% or more foreign-owned to informational reporting and record maintenance requirements. Currently, certain domestic business entities, such as single member LLCs, are treated as disregarded entities and thus exempt from the requirements of section 6038A, even if they're foreign owned.

The proposed regulations would reclassify these disregarded entities as corporations separate from the foreign owner for the purposes of section 6038A. Thus, these entities will be subject to the reporting requirements. Additionally, the disregarded entities would be required to obtain an employee identification number by filing Form SS-4. This change in entity classification, for section 6038A purposes only, would require disregarded entities to report transactions between the domestic disregarded entity and its foreign owner, or other related parties, on Form 5472. They'll also be required to maintain records that demonstrate the accuracy of the information return.

The IRS notes that these changes are necessary to provide the information necessary to ensure enforcement, and meet its obligations under tax treaties and other agreements. Treasury Secretary Jack Lew noted that the current lack of transparency regarding US disregarded entities may be allowing "foreign persons to hide assets in US accounts".

In order to ensure that all transactions with foreign related parties are included, the proposed regulations expand the number of reportable transactions by referencing section 482 which includes:

- Sales
- Assignments
- Leases
- Loans
- Advances
- Contributions
- Transfers in an interest, or right to use property or money
- Performances of any services for the benefit of, or on behalf of, another

Additionally, the proposed regulations would make the small business exception (for corporations with less than \$10,000,000 in US gross receipts) and the de minimis transactions exception (for corporations with total payments to or from foreign related parties of i) \$5,000,000 or less and ii) less than 10% of US gross income) unavailable to these disregarded entities.

The penalty of \$10,000 due to failure to file Form 5472 and failure to maintain records will apply to disregarded entities affected by the proposed regulations.

If you have any questions, please contact your tax advisor or:

Kellie Becker
877.622.2257, Ext. 64904
kellie.becker@plantemoran.com

Bill Henson
877.622.2257, Ext. 23635
bill.henson@plantemoran.com

Randall Janiczek
877.622.2257, Ext.34368
randall.janiczek@plantemoran.com