

Proposed Treasury Regulations Relating to Foreign-Owned Domestic Disregarded Entities

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On May 10, 2016, the United States Treasury Department issued proposed regulations that would require information reporting by certain foreign-owned single member U.S. limited liability companies ("LLCs") and grantor trusts. The proposed regulations represent the latest measure by the government to implement its policy of expanding international information reporting and cooperation in an effort to combat cross-border structures used for purposes of secrecy and global tax evasion. The proposed regulations are designed to allow the United States to collect information about non-U.S. persons that make investments through U.S. entities in order to share such information with taxing authorities in other countries that have entered into a tax treaty or tax information exchange agreement with the United States and/or an Intergovernmental Agreement pursuant to the Foreign Account Tax Compliance Act or "FATCA" in order to aid such countries in identifying non-compliant taxpayers.

Under current law, a foreign-owned "disregarded" domestic entity, such as a single member Delaware LLC that has not elected to be taxed as a corporation, and its foreign owner generally are not subject to any U.S. tax reporting requirements unless the entity has U.S. business activities or receives U.S. source income. Under the proposed regulations, a foreign-owned disregarded entity would be treated as a corporation for purposes of the reporting requirements under Section 6038A of the Internal Revenue Code. As a result, such an entity generally would be required to obtain a U.S. employer identification number (or "EIN"), maintain certain records and annually furnish information regarding its direct and indirect foreign owners and its transactions with related parties on IRS Form 5472 without regard to the *de minimis* exceptions found in Section 6038A. If enacted in their present form, the proposed regulations would apply to both existing and newly-formed entities and would take effect 12 months after being finalized.

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