



April 15 deadline: US Form 5472 for foreign owned, single member LLC

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Introduction

A limited liability company (LLC) that is created under the laws of a US state and wholly owned by a single non-US person (a foreign-owned LLC) is required to report transactions with its non-US owner and other related parties to the Internal Revenue Service (IRS) on Form 5472, which must be submitted with a pro forma Form 1120. A single-member LLC is a disregarded entity for US tax purposes but, when foreign owned, is treated as a corporation solely for the purposes of the Form 5472 filing obligation. A penalty of \$25,000 will be assessed for failure to file Form 5472 when due and in the manner prescribed.

Form 5472 and Form 7004 to request extension

Advisers to families using LLCs in the context of a family succession planning structure should review all contributions to and distributions from the foreign-owned LLC. Details on who must file and how and when to file can be found at "Completing and filing Form 5472 for foreign-owned US LLC"

<https://www.lexology.com/library/detail.aspx?g=e689268a-3f96-44eb-ac2b-8c973f37e1cc>. But note, the penalty for failure to file Form 5472 when due and in the manner prescribed is now \$25,000. The penalty also applies for failure to maintain records that might be relevant to determine the correct treatment of transactions with related parties.

To request an extension of time to file, the LLC must file Form 7004 by April 15. Because the LLC's Form 5472 must be attached to a pro forma Form 1120, the code for Form 1120 should be entered on Form 7004, Part I, line 1. Write "Foreign-owned U.S. DE" across the top of Form 7004. Fax or mail the Form 7004 to the fax number or mailing address specified in the Form 5472 instructions. Do not use the regular filing address listed in the instructions for Form 7004.

The IRS last updated Form 5472 as of December 2023 (and its instructions as of December 2024). But the form still includes references that can be confusing when completing the form for a foreign-owned LLC. For example, the authors check line 3 in Part I to indicate that "the reporting corporation is a foreign-owned domestic disregarded entity (foreign-owned U.S. DE) treated as a corporation" for purposes of filing Form 5472 and do not check line 2. Line 2 was in the form previously when it was filed only by a 25% foreign-owned US corporation and line 3 was added when foreign-owned LLCs became subject to filing.

This article provides further discussion on related parties and reportable transactions.

Related parties

The definition of “related party” includes the single direct foreign owner of the LLC, which is identified in Part II of Form 5472. The LLC then completes Part III of the form with details of the party with which the LLC had a reportable transaction during the tax year. If the reportable transaction is between the LLC and its foreign owner, Part III again provides details for the foreign owner. However, if the reportable transaction is between the LLC and another related party, details of that other related party are provided in Part III.

The definition of 'related party' is broad and includes IRS constructive ownership and attribution rules. In the context of a family succession planning structure, a related party will be, among other things:

- an indirect foreign owner – for example, if the foreign owner is a grantor trust, transactions between the LLC and the non-US grantor of the trust (i.e., the indirect owner of the LLC), such as a loan by the LLC to the grantor;
- a person who is related to the foreign owner – for example, if the foreign owner is a trust, transactions between the LLC and a beneficiary of the trust or between the LLC and another trust with the same grantor; or
- a person who is a member of the foreign owner's controlled group – for example, if the foreign owner is a corporation, transactions between the LLC and another subsidiary of the foreign owner.

There are many other possible related parties under the complex constructive ownership and attribution rules. The IRS final regulations include examples involving foreign-owned LLCs that form another LLC that does not elect to be treated as a corporation, in which case all transactions involving the foreign owner (or another related party) and the underlying LLC are also reportable.

The foreign-owned LLC is to report in Part III the name, address and other details of the related party (domestic or foreign) with which the LLC had reportable transactions during the tax year. A separate Form 5472 must be filed for each foreign or domestic related party with which the reporting LLC had a reportable transaction. If the reporting LLC is filing more than one Form 5472, all such forms will be filed as attachments to a single pro forma Form 1120.

Reportable transactions

The IRS regulations requiring foreign-owned LLCs to file Form 5472 expanded reportable transactions to specifically include amounts paid or received in connection with the formation, dissolution, acquisition and disposition of the LLC, including contributions to and distributions from the LLC. The reportable transactions enumerated in Part IV of Form 5472 are generally not the types of transactions that occur within the context of a family succession planning structure, with the exception perhaps of loans and interest paid or received on such borrowings. Therefore, the authors will include a zero on the total lines of Part IV and then tick the box in Part V to indicate that reportable transactions of the foreign-owned LLC are described on an attached separate sheet.

'Transaction' is broadly defined in Section 1.482-1(i)(7) of the regulations as follows:

Transaction means any sale, assignment, lease, license, loan, advance, contribution, or any other transfer of any interest in or a right to use any property (whether tangible or intangible, real or personal) or money, however such transaction is effected, and whether or not the terms of such transaction are formally documented. A transaction also includes the performance of any services for the benefit of, or on behalf of, another taxpayer.

The separate sheet filed with Form 5472 can detail transactions such as:

- direct and indirect contributions to LLC capital;
- expenses of the LLC paid by its foreign owner or another related party;

- the use by a beneficiary of the foreign trust owner of residential property owned by the LLC;
- payments made on non-interest-bearing loans to beneficiaries of the foreign trust owner;
- payments made to beneficiaries of the foreign trust owner which would be treated for US tax purposes as deemed distributions from the LLC to the trust and then from the trust to the beneficiaries.

Pro forma Form 1120

Careful attention should be paid to the instructions to Form 5472 on completing only the required items on Form 1120. "Foreign-Owned U.S. DE" also should be written across the top of Form 1120. Especially for LLC managers who may be submitting from overseas, it is recommended that Form 1120 and Form 5472 with attachment be faxed to the number noted in the instructions.

Comment

Form 5472 is an information return and not a tax return. It can sometimes be overlooked since single-member LLCs do not generally have US tax or reporting obligations. Nevertheless, the \$25,000 penalty for failure to file Form 5472 or maintain required books and records is not insignificant. It is therefore recommended that advisers to families using LLCs in the context of a family succession planning structure review all contributions to and distributions from the foreign-owned LLC and report them on Form 5472 prior to the deadline.

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