



## Treasury issues proposed regulations imposing new reporting obligations on domestic disregarded entities

### Global information reporting update

#### Treasury issues proposed regulations imposing new reporting obligations on domestic disregarded entities (“DREs”)

On May 10, 2016, as part of a comprehensive effort to increase transparency and enforce US tax laws, Treasury and the Internal Revenue Service (IRS) issued proposed regulations ([REG-127199-15](#)) (the “Proposed Regulations”) that would impose new reporting obligations on certain domestic DREs. These new obligations include reporting and recordkeeping requirements similar to those found in section 6038A for 25% foreign-owned domestic corporations.

Currently, certain domestic business entities, such as single-member LLCs, are not obligated to file income or information returns, are not required to obtain Employer Identification Numbers (“EINs”), and do not have associated recordkeeping obligations. All such obligations are imposed directly upon the owner. This is generally a sufficient solution except when the domestic DRE is wholly owned by a foreign person without reporting obligations to the IRS, because the foreign person is not engaged in a US trade or business, does not receive effectively connected income, and only receives certain types of US-source income that is properly withheld at its source.

The Proposed Regulations would extend the following obligations to domestic DREs that are wholly-owned by a foreign person:

- The filing of an annual [Form 5472](#) (Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business) with respect to reportable transactions between the domestic DRE and its foreign owner or other related parties;
- The maintenance of book and records sufficient to establish the accuracy of the Form 5472 and the correct US tax treatment of such transactions; and
- The requirement to obtain an EIN for purposes of filing the Form 5472.

Additionally, the scope of “reportable transactions” under the Proposed Regulations would expand to cover any transaction currently governed by Treas. Reg. § 1.482-1(i)(7), including any sale, assignment, lease, license, loan, advance, contribution, or other transfer of any interest in or a right to use any property or money, as well as the performance of any services for the benefit of, or on behalf of, another taxpayer. For example, contributions to and distributions from DREs would be considered reportable transactions with respect to such entities.

The recordkeeping regime for DREs imposed by the Proposed Regulations would not provide the current exemptions for small corporations or *de minimis* reportable transactions that exist for domestic corporations. Moreover, reportable transactions would have to be reported under the Proposed Regulations even if the income resulting from those transactions is already subject to reporting under different provisions; Treasury and the IRS request comments on possible alternative methods for reporting the DRE’s transactions in these cases.

According to Treasury and the IRS, “these Proposed Regulations would not alter the framework of the existing entity classification regulations, including the treatment of certain entities as disregarded.” Rather, their purpose is to ensure that the IRS has “improved access to information that it needs to satisfy its obligations under US tax treaties, tax information exchanges and similar international agreements, as well as to strengthen the enforcement of US tax laws.” As stated in the White House Fact Sheet concerning the Proposed Regulations, they are part of a comprehensive framework geared towards “strengthening the global financial system and providing greater transparency,” as well as stemming the use of “anonymous shell companies and other legal entities” to hide or “launder proceeds from corruption or other illegal activities, finance criminal activity or even terrorism, evade international sanctions regimes, or evade taxes.”

The comment period for the Proposed Regulations expires on August 8, 2016. If adopted as final, the Proposed Regulations would be applicable to taxable years ending on or after the date that is 12 months after the date the Proposed Regulations are published as final regulations.

**For more information please contact:**

**Matthew Cahill**

Partner, Global Information Reporting  
Deloitte Tax LLP  
+1 212 436 3420

**Jason Gritton**

Manager, Washington National Tax  
Deloitte Tax LLP  
+1 202 220 2655

**Denise Hintzke**

Managing Director, Global FATCA  
Tax Leader  
Deloitte Tax LLP  
+1 212 436 4792

**Anthony Martirano**

Managing Director, Global Information Reporting  
Deloitte Tax LLP  
+1 973 602 6986

**Susan Segar**

Managing Director, Global Information Reporting  
Deloitte Tax LLP  
+1 703 885 6328

This alert contains general information only and Deloitte is not, by means of this alert, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This alert is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this alert.

**About Deloitte**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a detailed description of DTTL and its member firms. Please see [www.deloitte.com/us/about](http://www.deloitte.com/us/about) for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Copyright © 2016 Deloitte Development LLC. All rights reserved.