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Treasury Decisions
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Rules and Regulations

DEPARTMENT OF THE TREASURY
Internal Revenue Service (IRS)

26 CFR Parts 1 and 602

59 FR 64301; RIN 1545-AQ06

Information Returns Required of United States Persons With Respect To Certain Foreign Corporations

T.D. 8573

DATE: December 14, 1994

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to information returns required of United States persons with respect to annual accounting periods of certain foreign corporations. These regulations clarify certain requirements of the Income Tax Regulations relating to Form 5471 and affect controlled foreign corporations and their United States shareholders.

EFFECTIVE DATE: January 13, 1995.

FOR FURTHER INFORMATION CONTACT: Carl Cooper, 202-622-3840, not a toll free number.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (*44 U.S.C. 3504(h)*) under control number 1545-1317. Estimates of the reporting burden in these final regulations will be reflected in the burden of Form 5471.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On July 7, 1992, the IRS published a notice of proposed rulemaking in the **Federal Register** (*57 FR 29851*) proposing amendments to the Income Tax Regulations (26 CFR part 1) under sections 6035, 6038, and 6046 of the Internal Revenue Code of 1986 (Code). These amendments were proposed to clarify the requirements of §§ 1.6035-1, 1.6038-2, and 1.6046-1 of the Income Tax Regulations relating to Form 5471. Written comments responding to the

notice were received. No public hearing was requested and, therefore, no public hearing was held. Some commentators suggested that the amendment to § 1.6038-2(h) would impose a greater burden with respect to ongoing compliance and conversion of data gathering routines than present requirements; however, the majority of the responses to this amendment have been favorable. After consideration of these comments, the Service has determined that the overall burden is alleviated. Thus, having considered all comments regarding the proposed amendments, those amendments are adopted (with certain effective date changes) by this Treasury decision.

The changes to paragraph (h) (and corresponding changes in § 1.6046-1(g)) are effective for taxable years ending after December 31, 1994, but only for returns filed after December 31, 1995.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of the proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Carl Cooper of the Office of Associate Chief Counsel (International), IRS. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1-INCOME TAXES

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.6035 -- [Amended]

Par. 2. Section 1.6035-1, paragraph (a)(1) is amended by adding a sentence at the end to read as follows:

§ 1.6035-1 -- Returns of U.S. officers, directors and 10-percent shareholders of foreign personal holding companies for taxable years beginning after September 3, 1982.

(a) * * *

(1) * * * In the case of a foreign personal holding company which is a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period.

* * * * *

§ 1.6038 -- [Amended]

Par. 3. Section 1.6038-2 is amended as follows:

1. Paragraph (d)(5) is added following paragraph (d)(4) and immediately before the concluding text.
2. Paragraph (e) is amended by removing the third sentence and adding two new sentences in its place.
3. Paragraph (f)(10)(iii) is amended by removing the word "and" immediately following the semicolon and paragraph (f)(10)(iv) is amended by removing the colon and adding a semicolon in its place.
4. Paragraph (f)(10)(v) is added.
5. Paragraph (g) is amended as follows:
 - a. The introductory text of paragraph (g) is amended by replacing the colon with a period and adding a second sentence at the end.
 - b. The concluding text of paragraph (g) is amended by removing the words "form and".
6. Paragraph (h) is revised.
7. The additions and revisions read as follows:

§ 1.6038-2 -- Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

* * * * *

(d) * * *

(5) For taxable years ending after December 31, 1987, with respect to a corporation organized under the laws of American Samoa, the term does not include an individual who is a bona fide resident of American Samoa, provided-

(i) 80 percent or more of the gross income of the corporation for the 3-year period ending at the close of the taxable year (or for such part of such period as such corporation or any predecessor has been in existence) was derived from sources within American Samoa or was effectively connected with the conduct of a trade or business in American Samoa; and

(ii) 50 percent or more of the gross income of such corporation for such period (or part) was derived from the conduct of an active trade or business within American Samoa.

* * * * *

(e) * * * In the case of a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period. The term *annual accounting period* may refer to a period of less than one year, where, for example, the foreign income, war profits, and excess profits taxes are determined on the basis of an accounting period of less than one year as described in section 902 (c) (5). * * *

(f) * * *

(10) * * *

(v) For Forms 5471 filed for taxable years ending after December 15, 1990, such earnings and profits information as the form shall prescribe, including post-1986 undistributed earnings described in section 902(c)(1), pre-1987 amounts, total earnings and profits, and previously taxed earnings and profits described in section 959(c); and

* * * * *

(g) *Financial statements.* * * * Forms 5471 filed after September 30, 1991, shall contain this information in such form or manner as the form shall prescribe with respect to each foreign corporation:

* * * * *

(h) *Method of reporting.* Except as provided in this paragraph (h), all amounts furnished under paragraphs (f) and (g) of this section shall be expressed in United States dollars with a statement of the exchange rates used. The following rules shall apply for taxable years ending after December 31, 1994, with respect to returns filed after December 31, 1995. All amounts furnished under paragraph (g) of this section shall be expressed in United States dollars computed

and translated in conformity with United States generally accepted accounting principles. Amounts furnished under paragraph (g)(1) of this section shall also be furnished in the foreign corporation's functional currency as required on the form. Earnings and profits amounts furnished under paragraphs (f)(10) (i), (iii), (iv), and (v) of this section shall be expressed in the foreign corporation's functional currency except to the extent the form requires specific items to be translated into United States dollars. Tax amounts furnished under paragraph (f)(10)(ii) of this section shall be furnished in the foreign currency in which the taxes are payable and in United States dollars translated in accordance with section 986(a). All amounts furnished under paragraph (f)(11) of this section shall be expressed in U.S. dollars translated from functional currency at the weighted average exchange rate for the year as defined in § 1.989(b)-1. The foreign corporation's functional currency is determined under section 985. All statements submitted on or with the return required under this section shall be rendered in the English language.

* * * * *

§ 1.6046-1 -- [Amended]

Par. 4. Section 1.6046-1 is amended as follows:

1. Paragraph (b)(10) introductory text is amended by removing the language "A copy of the following statements" and adding "The following information" in its place; and by removing the language "form and".
2. Paragraph (f)(5) is added.
3. Paragraph (g) is amended by adding three sentences at the end.
4. The additions and revisions read as follows:

§ 1.6046-1 -- Returns as to organization or reorganization of foreign corporations and as to acquisitions of their stock, on or after January 1, 1963.

* * * * *

(f) * * *

(5) *Accounting period and taxable year.* In the case of a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period.

(g) * * * For taxable years ending after December 31, 1994, with respect to returns filed after December 31, 1995, all amounts furnished under paragraph (c) of this section shall be expressed in United States dollars computed and translated in conformity with United States generally accepted accounting principles. Amounts furnished under paragraph (c)(3)(i) of this section shall also be furnished in the foreign corporation's functional currency as required on the form. Information described in paragraphs (b)(10) and (c)(3) of this section shall be submitted in such form or manner as the form shall prescribe.

* * * * *

PART 602-OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 6. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. Section 602.101, paragraph (c) is amended by removing the existing entries for 1.6038-2 and 1.6046-1 from the table and adding the following entries to the table in numerical order to read as follows:

§ 602.101 -- OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and	Current OMB control No.
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described

* * * * *

1.6038-2

1545-0704
1545-0805
1545-1317

* * * * *

1.6046-1

1545-0704
1545-0794
1545-1317

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 10, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

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