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Instructions for Form 8858

(Rev. December 2018)

Information Return of U.S. Persons

With Respect To Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs)

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 8858, Schedule M (Form 8858), and their instructions, such as legislation enacted after they were published, go to IRS.gov/Form8858.

What's New

- The filing of Form 8858, including the separate Schedule M (Form 8858), has been expanded to include the reporting of foreign branch activity of a U.S. person, a controlled foreign corporation (CFC), or a controlled foreign partnership (CFP). A separate Form 8858 is filed for each foreign branch (FB) or foreign disregarded entity (FDE). See [Who Must File](#), later.
- Changes were made throughout the Form 8858 to account for the filing of the form by either an FB or FDE, as needed.
- Changes were made to Schedule C-1 to address new regulations under section 987.
- Lines were revised or added to Schedule G, Other Information, including new lines 6 and 7, relating to section 59A, as added by P.L. 115-97.
- New Schedule I, Transferred Loss Amount, relating to Section 91, enacted by P.L. 115-97, section 14102, has been added to Form 8858. See [Schedule I](#), later.
- New Schedule J, Income Taxes Paid or Accrued, has been added to Form 8858. See [Schedule J](#), later.
- Schedule M (Form 8858) is required to be filed with each Form 8858 for an FB and an FDE, regardless of the tax owner.

General Instructions

Purpose of Form

Form 8858 is used by certain U.S. persons that operate an FB or own an FDE directly or, in certain circumstances, indirectly or constructively. See [U.S. Person Filing Form 8858](#), later. The form and schedules are used to satisfy the reporting requirements of sections

6011, 6012, 6031, and 6038, and related regulations.

Who Must File

The following U.S. persons that are tax owners of FDEs (see definitions below), operate an FB, or that own certain interests in foreign tax owners of FDEs or FBs, must file Form 8858 and Schedule M (Form 8858).

1. U.S. persons that are tax owners of FDEs or operate an FB at any time during the U.S. person's tax year or annual accounting period. Complete the entire Form 8858, including the separate Schedule M (Form 8858), Transactions Between Foreign Disregarded Entity (FDE) or Foreign Branch (FB) and the Filer or Other Related Entities.
2. U.S. Person that directly (or indirectly through a tier of FDEs or partnerships) is a tax owner of an FDE or operates an FB. Complete the entire Form 8858, including the separate Schedule M (Form 8858).
3. Certain U.S. persons that are required to file Form 5471 with respect to a controlled foreign corporation (CFC) that is a tax owner of an FDE or operates an FB at any time during the CFC's annual accounting period.

Category 4 filers of Form 5471. Complete the entire Form 8858 and the separate Schedule M (Form 8858).

Category 5 filers of Form 5471. Complete only the identifying information on page 1 of Form 8858 (for example, everything before Schedule C) and Schedules G, H, and J. Do not complete the separate Schedule M (Form 8858).

4. Certain U.S. persons that are required to file Form 8865 with respect to a controlled foreign partnership (CFP) that is a tax owner of an FDE or operates an FB at any time during the CFP's annual accounting period.

Category 1 filers of Form 8865. Complete the entire Form 8858 and the separate Schedule M (Form 8858).

Category 2 filers of Form 8865. Complete only the identifying information on page 1 of Form 8858 (for example, everything above Schedule C)

and Schedules G, H, J, and the separate Schedule M (Form 8858). You are not required to complete Form 8858 if there is a Category 1 filer of Form 8865 that completes the entire Form 8858 and separate Schedule M (Form 8858) with respect to the FDE or FB.

Note. Complete a separate Form 8858 and all applicable schedules for each FDE or FB.

Exceptions To Filing Form 8858

Multiple filers of the same information. In the case of Category 4 or 5 filers of Form 5471 or Category 1 filers of Form 8865 who are also required to file Form 8858, one person may file Form 8858 and Schedule M (Form 8858), if applicable, for other persons who have the same filing requirements with respect to both Form 8858 and Form 5471 or Form 8865. If you and one or more other persons are required to furnish information for the same FDE or indirect FB for the same period, this information may be included with or attached to, and filed in the same manner as, the multiple filer information provided with respect to the CFC or the CFP. See *Multiple filers of same information* in the Form 5471 instructions or *Multiple Category 1 filers* in the Form 8865 instructions.

When and Where To File

Form 8858 is due when your income tax return or information return is due, including extensions. If you are the tax owner of the FDE or operate an FB, attach Form 8858 and the separate Schedule M (Form 8858), if required, to your income tax return or information return. If you are not the tax owner of the FDE or indirect FB, attach Form 8858 to any Form 5471 or Form 8865 you are filing with respect to the CFC or the CFP that is the tax owner of the FDE or operates the FB.

Definitions

U.S. Person

A U.S. person is:

- A citizen or resident alien of the United States (see Pub. 519, U.S. Tax

Guide for Aliens, for guidance on determining resident alien status),

- A domestic partnership,
- A domestic corporation,
- Any estate (other than a foreign estate, within the meaning of section 7701(a)(31)(A)), and
- Any domestic trust.

A domestic trust is any trust if:

1. A court within the United States is able to exercise primary supervision over the administration of the trust and
2. One or more U.S. persons have the authority to control all substantial decisions of the trust.

U.S. Person Filing Form 8858

The U.S. person filing Form 8858 is any U.S. person that:

- Is the tax owner of an FDE.
- Owns a specified interest in an FDE indirectly or constructively through a CFC or a CFP. See items 2 and 3 of [Who Must File](#), earlier, for more detailed information.
- Operates (directly or indirectly through a tier of FDEs or partnerships) an FB.

Throughout these instructions, when the pronouns “you” and “your” are used, they are used in reference to the U.S. person filing Form 8858.

Foreign Disregarded Entity (FDE)

An FDE is an entity that is not created or organized in the United States and that is disregarded as an entity separate from its owner for U.S. income tax purposes under Regulations sections 301.7701-2 and 301.7701-3. See the instructions for Form 8832, Entity Classification Election, for more information.

An eligible entity uses Form 8832 to elect how it will be classified for federal tax purposes. A copy of Form 8832 is attached to the entity's federal tax return for the tax year of the election; however, special rules apply if the entity is not required to file a tax return. For more information, see *Where To File* in the instructions for Form 8832.

Note. Rules, effective September 28, 2009, allow an eligible entity to request a late entity classification election. See Rev. Proc. 2009-41, 2009-39 I.R.B. 439 for more information.

Tax Owner of FDE

The tax owner of the FDE is the person that is treated as owning the assets and

liabilities of the FDE for purposes of U.S. income tax law.

Direct Owner of FDE

The direct owner of an FDE is the legal owner of the disregarded entity.

For example, assume A, a U.S. individual, is a 60% partner of CFP, a controlled foreign partnership. FDE 1 is an FDE owned by CFP, and FDE 2 is an FDE owned by FDE 1. In this example, FDE 1 is the direct owner of FDE 2, and CFP is the direct owner of FDE 1. CFP is the tax owner with respect to both FDE 1 and FDE 2. A would be required to file the Forms 8858 relating to FDE 1 and FDE 2 with the Form 8865 it files with respect to CFP.

Foreign Branch (FB)

A foreign branch is defined in Regulations section 1.367(a)-6T(g). For purposes of filing a Form 8858, a foreign branch also includes a qualified business unit (QBU) defined in Regulations section 1.989(a)-1(b)(2)(ii).

For example, assume A, a domestic corporation, operates an FB, FB1, in country X and is the tax owner of an FDE, FDE1, in country Y that also operates an FB, FB2, in country Z. In addition, A is the sole owner of CFC that operates an FB, FB3, in country Z. FB1, FB2 and FB3 qualify as an FB under Regulations section 1.367(a)-6T(g).

In this example, A is the direct owner of the activities of FB1 and FDE1, and an indirect owner of the activities of FB2, through its ownership of FDE1. CFC is the direct owner of the activities of FB3. A would be required to file separate Forms 8858 relating to FB1, FDE1, and FB2, its indirect FB through its ownership of FDE1.

CFC is the tax owner with respect to the FB activities of FB3. A would be required to file the Form 8858 relating to FB3 with the Form 5471 it files with respect to CFC. The Form 5471 for CFC would include any income or loss incurred by FB3.

Penalties

Failure to file information required by section 6038(a) (Form 8858 and Schedule M (Form 8858)).

- A \$10,000 penalty is imposed for each annual accounting period of each CFC or CFP for failure to furnish the required information within the time prescribed. If the information is not filed within 90 days after the IRS has mailed a notice of the failure to the U.S. person, an additional \$10,000 penalty (per CFC

or CFP) is charged for each 30-day period, or fraction thereof, during which the failure continues after the 90-day period has expired. The additional penalty is limited to a maximum of \$50,000 for each failure.

- Any person who fails to file or report all of the information required within the time prescribed will be subject to a reduction of 10% of the foreign taxes available for credit under sections 901 and 960. If the failure continues 90 days or more after the date the IRS mails notice of the failure to the U.S. person, an additional 5% reduction is made for each 3-month period, or fraction thereof, during which the failure continues after the 90-day period has expired. See section 6038(c)(2) for limits on the amount of this penalty.

Criminal penalties. Criminal penalties under sections 7203, 7206, and 7207 may apply for failure to file the information required by section 6038.

Note. Any person required to file Form 8858 and Schedule M (Form 8858) who agrees to have another person file the form and schedules for him or her may be subject to the above penalties if the other person does not file a correct and proper form and schedule.

Other Reporting Requirements

Reporting Exchange Rates on Form 8858

When translating amounts from functional currency to U.S. dollars, you must use the method specified in these instructions. But, regardless of the specific method required, all exchange rates must be reported using a “divide-by convention” rounded to at least 4 places. That is, the exchange rate must be reported in terms of the amount by which the functional currency amount must be divided in order to reflect an equivalent amount of U.S. dollars. As such, the exchange rate must be reported as the units of foreign currency that equal one U.S. dollar, rounded to at least 4 places. Do not report the exchange rate as the number of U.S. dollars that equal one unit of foreign currency.

Note. You must round the result to more than 4 places if failure to do so would materially distort the exchange rate or the equivalent amount of U.S. dollars.

Example. During its annual accounting period, an FDE owned by a

U.S. person had current income of 30,255,400 Yen on Schedule H, line 6. The Schedule H instructions specify that the filer must translate these amounts into U.S. dollars at the average exchange rate for the tax year in accordance with the rules of section 989(b).

The average exchange rate is 118.5050 Japanese Yen to 1 U.S. dollar (0.00843846 U.S. dollars to 1 Japanese Yen). Divide 30,255,400 Yen by 118.5050 to determine the U.S. dollar amount to enter on line 7 of Schedule H. Enter 118.5050 after the flush language following line 7.

Electronic Filing of Form 8858

If you file your income tax return electronically, see the instructions for your income tax return for general information about electronic filing.

Note. If you are filing Form 1120 or 1065 electronically, you must attach Form 8858 electronically (as an attachment to your electronically filed Form 5471, Form 8865, Form 1120, or Form 1065). If you are filing Form 1040 or Form 1041 electronically (with or without a Form 5471 or Form 8865), attach Form 8858 to the applicable Form 8453.

Computer-Generated Form 8858 and Schedules

A computer-generated Form 8858 and its schedules may be filed if they conform to and do not deviate from the official form and schedules. Generally, all computer-generated forms must receive prior approval from the IRS and are subject to an annual review.

Submit all requests for approval to:

Internal Revenue Service
Attention: Substitute Forms
Program, SE:W:CAR:MP:T:M:S
1111 Constitution Avenue NW
IR-6526 Washington, DC 20224

Important: Be sure to attach the approval letter to Form 8858.

Every year, the IRS issues a revenue procedure to provide guidance for filers of computer-generated forms. In addition, every year the IRS issues Pub. 1167, General Rules and Specifications For Substitute Forms and Schedules, which reprints the most recent applicable revenue procedure. Pub. 1167 is available at www.irs.gov/Pub1167, or can be ordered by calling 1-800-TAX-FORM (1-800-829-3676).

Dormant FDEs

Announcement 2004-4, 2004-4 I.R.B. 357, provides for a summary filing procedure for filing Form 8858 for a dormant FDE. A dormant FDE is an FDE that would be a dormant CFC if it were treated as a foreign corporation for U.S. tax purposes.

If you elect the summary procedure, complete only the identifying information before Schedule C on page 1 of Form 8858 for each dormant FDE as follows:

- The top margin of the summary return must be labeled "Filed Pursuant to Announcement 2004-4 for Dormant FDE."
- Include the name, address, identifying number, and tax year of the U.S. person filing Form 8858 (see [U.S. Person](#), earlier).
- Include the annual accounting period of the dormant FDE (below the title of the form) and complete 1a through 1e and 1g.
- Complete 3a through 3d, if applicable.
- Complete 4a through 4c, if applicable.

File this summary return in the manner described in [When and Where To File](#), earlier.

Specific Instructions

Important: If the information required in a given section exceeds the space provided within that section, do not write "see attached" in the section and then attach all of the information on additional sheets. Instead, complete all entry spaces in the section and attach the remaining information on additional sheets. The additional sheets must conform with the IRS version of that section.

Identifying Information

Annual Accounting Period

Enter, in the space provided below the title of Form 8858, the annual accounting period of the FDE or FB for which you are furnishing information. The annual accounting period of an FDE or FB is the annual accounting period or tax year of the tax owner. Therefore, in the case of a U.S. tax owner, the annual accounting period of the FDE or FB is the tax year of the U.S. tax owner; and in the case of a CFC or CFP that is a tax owner, the annual accounting period of the FDE or FB is the annual accounting period of the CFC or CFP.

Person Filing This Return

In the spaces provided at the top of page 1 of Form 8858, provide the identifying information for the U.S. person filing Form 8858 (see [U.S. Person](#), earlier).

If a U.S. corporation is the U.S. person filing Form 8858 and is a member of a consolidated group, list the common parent as the person filing the return and enter its identifying information in the spaces provided at the top of page 1 of the form.

Name Change

If the name of the person filing the return, the tax owner, the direct owner, the FB, or the FDE whose activities are being reported changed within the past 3 years, show the prior name(s) in parentheses after the current name.

Addresses

Use the following instructions to complete lines 1a, 2a, 2b, 3a, 4a, and the entry spaces at the top of page 1 of the form for the filer's address.

U.S. addresses. Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the U.S. person has a P.O. box, show the box number instead.

Foreign addresses. Enter the information in the following order: city, province or state, and country. Follow the country's practice for entering the postal code, if any. Do not abbreviate the country name. However, if you are filing Form 8858 electronically, enter a valid country code posted on the IRS website IRS.gov/CountryCodes instead of the country name.

Identifying Numbers

Use the following instruction to complete lines 1b, 3c, 4c, and the entry space at the top of page 1 of the form for the filer's identifying number. The identifying number of an individual is his or her social security number (SSN). The identifying number of all others is their employer identification number (EIN).

If a U.S. corporation is the U.S. person filing Form 8858 and is a member of a consolidated group, see [Person Filing This Return](#), earlier.

Functional Currency

Use the following instruction to complete lines 1i, 3e, and 4d.

Enter the entity's functional currency.

See sections 985 and 989, and Regulations sections 1.985-1(a) through (c) and 1.989(a)-1(b) for rules for determining the functional currency of a qualified business unit (QBU) and the definition of a QBU.

Hyperinflationary exception. An entity that otherwise would be required to use a hyperinflationary currency as its functional currency must use the U.S. dollar as its functional currency and compute income or loss or earnings and profits using the U.S. dollar approximate separate transactions method of accounting (DASTM) under the special rules of Regulations section 1.985-3. See Regulations section 1.985-1(b)(2).

Line 1b(2)—Reference ID Number

A reference ID number (defined below) is required on line 1b(2) only in cases where no EIN was entered on line 1b(1) for the FDE or FB. However, filers are permitted to enter both an EIN on line 1b(1) and a reference ID number on line 1b(2). If applicable, enter the reference ID number you have assigned to the FDE or FB identified on line 1a.

A "reference ID number" is a number established by or on behalf of the U.S. person identified at the top of page 1 of the form that is assigned to an FDE or FB with respect to which Form 8858 reporting is required. These numbers are used to uniquely identify the FDE or FB in order to keep track of the FDE or FB from tax year to tax year.

The reference ID number must meet the requirements set forth below.

Note. Because reference ID numbers are established by or on behalf of the U.S. person filing Form 8858, there is no need to apply to the IRS to request a reference ID number or for permission to use these numbers.

Requirements

The reference ID number that is entered in item 1b(2) must be alphanumeric (defined below) and no special characters or spaces are permitted. The length of a given reference ID number is limited to 50 characters.

For these purposes, the term "alphanumeric" means the entry can be alphabetical, numeric, or any combination of the two.

The same reference ID number must be used consistently from tax year to tax year with respect to a given FDE, FB, or tax owner. If for any reason a reference ID number falls out of use (for example,

the FDE, FB, or tax owner no longer exists due to disposition or liquidation), the reference ID number used for that FDE, FB, or tax owner cannot be used again for another FDE, FB, or tax owner for purposes of Form 8858 reporting.

There are some situations that warrant correlation of a new reference ID number with a previous reference ID number when assigning a new reference ID number to an FDE, FB, or tax owner partnership. For example:

- In the case of a merger or acquisition, a Form 8858 filer must use a reference ID number which correlates the previous reference ID number with the new reference ID number assigned to the FDE, FB, or tax owner.
- Under Regulations section 301.6109-1(b)(2)(v), a foreign entity that makes an entity classification election on Form 8832 to become an FDE must have an EIN. For the first year that Form 8858 is required to be filed after an entity classification election is made on behalf of the foreign entity on Form 8832, the new EIN must be entered on line 1b(1) of Form 8858 and the old reference ID number must be entered on line 1b(2) of Form 8858. In subsequent years, a filer may continue to enter both the EIN on line 1b(1) and the reference ID number on line 1b(2), but must enter at least the EIN on line 1b(1).

You must correlate the reference ID numbers as follows: New reference ID number (space) Old reference ID number. If there is more than one old reference ID number, you must enter a space between each such number. As indicated above, the length of a given reference ID number is limited to 50 characters and each number must be alphanumeric and no special characters are permitted.

Note. This correlation requirement applies only to the first year the new reference ID number is used.

Line 1h—Principal Business Activity

Enter a brief description of the FDE's or FB's principal business activity.

Line 3b

If the tax owner is a CFC, enter the annual accounting period covered by Form 5471 (as described in Regulations section 1.6038-2(e)). If the tax owner is a CFP, enter the annual accounting period covered by Form 8865 (as described in Regulations section 1.6038-3(f)).

Line 3c(2)—Reference ID Number

A reference ID number (defined earlier) is required on line 3c(2) only in cases where no EIN was entered on line 3c(1). However, filers are permitted to enter both an EIN on line 3c(1) and a reference ID number on line 3c(2). If this tax owner is a CFC, enter the reference ID number for the CFC from Form 5471 Item 1b(2). If this tax owner is a CFP, enter the reference ID number for the CFP from Form 8865 Item F2(b). See the instructions for line 1b(2) for more information about the requirements for the reference ID number.

Line 4

If the FDE has more than one direct owner, attach a statement to Form 8858 that includes the information requested on line 4 for each additional direct owner.

Line 5

You must attach an organizational chart that includes the following information with respect to the chain of ownership between the tax owner and the FDE or FB and the chain of ownership between the FDE or FB and all entities in which the FDE or FB has a 10% or more direct or indirect interest:

- The name and percentage of ownership of all entities in the chain of ownership, including partnerships and entities disregarded as separate from their owners.
- The FDE's or FB's position in the chain of ownership.
- The tax classification of all entities in the chain of ownership (see Form 8832 instructions for tax classification rules and related definitions).
- The country under whose law each entity is organized.

For these purposes, the rules of section 958(a) (relating to "direct and indirect ownership") apply.

Each filer of Form 8858 that is required to file an organizational chart with respect to more than one FDE and/or FB may satisfy this requirement by filing a single organizational chart that includes the required information with respect to all FDEs and FBs.

Schedule C

Use Schedule C to report a summary income statement for the FDE or FB computed in the FDE's or FB's functional currency in accordance with U.S. generally accepted accounting principles (GAAP). Enter in the U.S. dollar column each line item functional

currency amount translated into dollars using U.S. GAAP translation rules. If the FDE or FB does not maintain U.S. GAAP income statements in U.S. dollars, you can use the average exchange rate as determined under section 989(b). The rate used should be the rate stated on line 7, Schedule H. If you choose to use the average exchange rate rather than the U.S. GAAP translation rules, check the box above line 1 on Schedule C.

Special rules for DASTM. If the FDE or FB uses DASTM, the functional currency column should reflect local hyperinflationary currency amounts computed in accordance with U.S. GAAP. The U.S. dollar column should reflect such amounts translated into dollars under U.S. GAAP translation rules. Differences between this U.S. dollar GAAP column and the U.S. dollar income or loss figured for tax purposes under Regulations section 1.985-3(c) should be accounted for on Schedule H. See *Special rules for DASTM*, under [Schedule H](#), later.

Line 13. Include on line 13 adjustments for extraordinary items, prior period adjustments, and the provision for income, war profits, and excess profits taxes deducted in accordance with U.S. GAAP. The terms “extraordinary items” and “prior period adjustments” have the same meaning given to them by U.S. GAAP (see Opinion No. 30 of the Accounting Principles Board and Statement No. 16 of the Financial Accounting Standards Board).

Important: Differences between this functional currency amount and the amount of taxes that reduce E&P (in the case of an FDE or FB of a CFC) or are deductible in computing U.S. taxable income (in the case of an FDE or FB of a U.S. person or a CFP) should be accounted for on line 2 or 3 of Schedule H.

Schedule C-1

The activities of an FDE or FB may give rise to one or more qualified business units (“QBUs”). If the QBU has a different functional currency than its owner, then such owner may be subject to section 987.

If an owner would be treated as owning multiple QBUs, complete a separate Schedule C-1 with respect to each QBU of the owner.

If a QBU has multiple owners, complete a separate Schedule C-1 for each owner.

However, if the U.S. person filing Form 8858 knows that the owner of a QBU has the same functional currency as a QBU owned by that person, the U.S. person filing Form 8858 is not required to complete Schedule C-1 with respect to that owner’s interest in the QBU.

If the U.S. person filing Form 8858 does not know and does not have reason to know the functional currency of the owner of a QBU, leave column (b) of lines 1 and 2 blank.

Line 2

Report on line 2 the amount of section 987 gain or loss recognized by the recipient that results from a remittance from a QBU or a termination of a QBU.

For amounts reported on line 2 of Schedule C-1, include a statement with the following information.

- A description of the methodology used to calculate the section 987 gain or loss.
- The amount of section 987 gain or loss included on line 2 that was previously deferred under regulations section 1.987-12T.

Line 3

Report on line 3 the amount of section 987 gain or loss that is deferred under Regulations section 1.987-12T either from a deferral event or an outbound loss event.

If an amount is included on line 3, include a statement that provides the following information.

- Description of the deferral event or outbound loss event.
- The amount of section 987 gain or loss recognized in the taxable year of the deferral event or outbound loss event.
- For an outbound loss event described in Regulations section 1.987-12T(d)(4), the amount of section 987 loss that is an adjustment to stock basis and the name of the CFC that had an adjustment to its basis from the outbound loss event.

Line 5

If the owner changed the method of accounting for its section 987 gain or loss, provide a statement describing the previous method used, the new method being used, and the rationale for the change in method of accounting.

Schedule F

Use Schedule F to report a summary balance sheet for the FDE or FB

computed and translated into U.S. dollars in accordance with U.S. GAAP.

Special rule for DASTM. If the FDE or FB uses DASTM, Schedule F should be prepared and translated into U.S. dollars according to Regulations section 1.985-3(d), rather than U.S. GAAP.

Schedule G

Line 3

If the tax owner of the FDE is claiming a section 165 loss with respect to worthless stock or with respect to certain obligations, see Regulations section 1.6011-4 for information relating to a disclosure statement that must be attached to Form 8858 if certain requirements are met.

Lines 6 and 7

A base erosion payment, in general, means any amount paid or accrued by an “applicable taxpayer” (as defined by section 59A(e)) to a foreign person which is a related party of the taxpayer and with respect to which a deduction is allowable under Chapter 1 of the Code. See section 59A(d).

A base erosion tax benefit, in general, means any deduction which is allowed under Chapter 1 for the taxable year with respect to any base erosion payment. Section 59A(c)(2).

See sections 59A(f) and 59A(g) and the Instructions for Form 8991 for the definitions of “foreign person” and “related party.”

Also, see the Instructions for Form 8991 for the determination of a base erosion payment and a base erosion tax benefit.

Line 6a

Check “Yes,” if the FB or FDE received (or accrued the receipt of) any base erosion tax payment, or had a base erosion tax benefit, from a foreign person which is a related party of the FB or FDE. Otherwise, check “No.”

If “Yes,” complete lines 6b and 6c, where appropriate.

Line 6b

Enter the total amount of base erosion payments received (or accrued the receipt of) by the FB or FDE for the tax year.

Line 6c

Enter the total amount of base erosion tax benefit recognized by payor relating to base erosion payments reported on line 6b. Also include on

line 6c any base erosion tax benefit taken into account in the current year from a base erosion payment in a previous year, for example, depreciation described in section 59A(c)(2)(A)(ii).

Line 7a

Check “Yes,” if the FB or FDE paid (or accrued the payment of) any base erosion tax payment, or had a base erosion tax benefit, to a foreign person which is related party of the FB or FDE. Otherwise, check “No.”

If “Yes,” complete lines 7b and 7c, where appropriate.

Line 7b

Enter the total amount of base erosion payments paid or accrued by the FB or FDE for the tax year.

Line 7c

Enter the total amount of base erosion tax benefit relating to base erosion payments reported on line 7b. Also include on line 7c any base erosion tax benefit taken into account in the current year from a base erosion payment in a previous year, for example, depreciation described in section 59A(c)(2)(A)(ii).

Line 8

Check “Yes” if the FB or FDE is a QBU as defined in section 989(a). If the QBU is subject to section 987, see Schedule C-1.

Line 9

Answer line 9 only if the tax owner of the FB or FDE is a CFC. Otherwise, skip to line 10.

Lines 10 through 13

Complete lines 10 through 13 only if the tax owner of the FB, or the tax owner of the interest in the FDE, is a U.S. corporation. Otherwise, continue to Schedule H.

An FB or interest in an FDE of a U.S. corporation may be treated as a separate unit and subject to dual consolidated loss (DCL) rules pursuant to Regulations sections 1.1503(d)-1 through 1.1503(d)-8.

Line 10a

Check “Yes” if the FB or FDE is a separate unit under Regulations section 1.1503(d)-1(b)(4), is not part of a combined separate unit under Regulations section 1.1503-1(b)(4)(ii), and has a DCL for the tax year. If you checked “Yes” on line 10a, enter the amount of the DCL on line 10b.

Line 11a

If the FB or interest in the FDE is treated as a separate unit under Regulations section 1.1503(d)-1(b)(4), is part of a combined separate unit and the combined separate unit has a DCL for the tax year, check “Yes,” and go to lines 11b and c. Otherwise, check “No,” then skip lines 11b through 12e and go to line 13a.

Line 11b

If you checked “Yes” on line 11a, enter the amount of the DCL for the combined separate unit (as defined in Regulations section 1.1503(d)-1(b)(4)). See Regulations section 1.1503(d)-5(c)(4)(ii) and complete line 11c.

Line 11c

If you checked “Yes” on line 11a, enter the net income or (loss) attributed to the FB or the interest in the FDE. See Regulations section 1.1503(d)-5(c)(4)(ii)(A).

Line 12a

Subject to certain exceptions, a domestic use of a dual consolidated loss is not permitted (“domestic use limitation rule”). A domestic use is deemed to occur in the year the dual consolidated loss is included in the computation of the taxable income of a consolidated group, unaffiliated dual resident corporation, or unaffiliated domestic owner, as applicable. See Regulations section 1.1503(d)-2.

Check “Yes” to line 12a if any portion of the DCL on lines 10b or 11b was taken into account in computing U.S. taxable income for the year. If “Yes,” go to line 12b. If “No,” go to line 13a.

Line 12b

A domestic use of a dual consolidated loss is permitted if an exception to the domestic use limitation rule applies. See Regulations section 1.1503(d)-6 for exceptions. For example, a domestic use election made pursuant to Regulations section 1.1503(d)-6(d) is such an exception.

If you check “Yes,” you may need to include a domestic use election with your U.S. income tax return. If the answer to line 12b is “Yes,” go to line 12c. If the answer to line 12b is “No,” skip line 12c and go to line 12d.

Line 12c

If you checked “Yes” on line 12b, the regulations require that you file documentation for an exception to apply. Check “Yes” on line 12c if you

have attached any of the following documents to your timely filed return:

- The document(s) required to be filed under an elective agreement between the U.S. and a foreign country, see Regulations section 1.503(d)-6(b)(1);
- “No Possibility of Foreign Use of Dual Consolidated Loss Statement,” see Regulations section 1.1503(d)-6(c); or
- “Domestic Use Election and Agreement,” see Regulations section 1.1503(d)-6(d)(1).

Line 12d

If a separate unit, as defined under Regulations section 1.1503(d)-1(b)(4), incurs a dual consolidated loss after having contributed to consolidated taxable income of a group in prior years, the dual consolidated loss may be used to offset income of domestic affiliates in the year of the dual consolidated loss (limited by the amount of the separate unit’s prior contribution to the cumulative consolidated taxable income of the group (“cumulative register”). See Regulations sections 1.1503(d)-4(c) and 1.1502-21(c).

Check “Yes” on line 12d if the DCL was used to compute consolidated taxable income. If the DCL amount exceeds the separate unit’s cumulative register as of the beginning of the tax year, the amount of DCL claimed is limited to the extent of the cumulative register and should be reflected on line 10b or 11b, as appropriate. Any excess DCL is treated as a loss carryover subject to the SRLY provisions of Regulations section 1.1502-21(c), as modified by Regulations section 1.1503(d)-4. Do not answer “Yes” to line 12d if the DCL was used to compute consolidated taxable income pursuant to one of the exceptions under Regulations section 1.1503(d)-6. See lines 12b and 12c, above. If the answer to line 12d is “Yes,” go to line 12e.

Check “No” on line 12d if the DCL was not used to compute consolidated taxable income or the separate unit’s cumulative register as of the beginning of the tax year is less than or equal to zero. In such case, the DCL is treated as a loss carryover subject to the SRLY provisions of Regulations section 1.1502-21(c), as modified by Regulations section 1.1503(d)-4.

Line 12e

If the answer to line 12d is “Yes,” enter the separate unit’s contribution to the cumulative consolidated taxable income as of the beginning of the tax year.

Line 13a

Check "Yes," if a triggering event occurred under Regulations section 1.1503(d)-6(e) requiring recapture of any DCLs attributable to the FB or interest in the FDE, individually or as part of a combined separate unit, in any prior tax years. If "Yes," enter the total amount of recapture on line 13b. In addition, attach a statement to Form 8858 that provides a detailed description of the triggering event, the regulation citation for the triggering event, and a schedule of the prior year(s) DCL(s) being recaptured by year.

Check "No" if, with regard to each such prior year DCL, one of the following is applicable:

- No triggering event occurred in the current tax year;
- A triggering event occurred in the current tax year, however a "Rebuttal to Triggering Event" is attached to the return pursuant to Regulations section 1.1503(d)-6(e)(2); or
- A triggering event occurred in the current tax year, however the amount of the recapture was reduced to **zero** pursuant to Regulation section 1.1503(d)-6(h)(2) and a "Reduction of Recapture Amount" is attached to the return.

Note. If there is a partial reduction of the recapture amount pursuant to the Regulation section 1.1503(d)-6(h)(2) and a recapture amount is required to be included in income, check "Yes", enter the reduced amount of the DCL recapture included in income, and attach the "Reduction of Recapture Amount" to the return.

Schedule H

Use Schedule H to report the FDE's current earnings and profits (E&P) or the FB's income (if the tax owner is a CFC) or the FDE or FB's taxable income (if the tax owner is a U.S. person or a CFP). Generally, enter the amounts on lines 1 through 6 in functional currency.

Special rules for DASTM. If the FDE or FB uses DASTM, enter on line 1 the dollar GAAP income or (loss) from line 14 of Schedule C. Enter on lines 2 and 3 the adjustments made in figuring current E&P or taxable income for U.S. tax purposes. Report these amounts in U.S. dollars. Enter on line 5 the DASTM gain or loss figured under Regulations section 1.985-3(d).

Lines 2 and 3

Certain adjustments must be made to the FDE or FB's line 1 net book income or (loss) to determine its current E&P or taxable income. The adjustments may include those needed to conform the foreign book income to U.S. GAAP and to U.S. tax accounting principles. If the FDE or FB's books are maintained in functional currency in accordance with U.S. GAAP, enter on line 1 the functional currency GAAP income or (loss) from line 14 of Schedule C, rather than starting with foreign book income, and show GAAP-to-tax adjustments on lines 2 and 3.

The adjustments may include the following:

- Capital gains and losses.
- Depreciation, amortization, and depletion.
- Investment or incentive allowance.
- Charges to statutory reserves.
- Inventory adjustments. Inventories must be taken into account according to the rules of sections 471 (incorporating the provisions of section 263A) and 472 and the related regulations.
- Taxes. See the instructions for Schedule C, line 13.

Attach a separate schedule that lists each applicable adjustment item. For each adjustment item, indicate the adjustment amount and whether the amount is a net addition or net subtraction. The separate schedule should also show two totals, the total net additions amount to be entered on line 2, and the total net subtractions amount to be entered on line 3.

Line 5

DASTM gain or (loss), reflecting unrealized exchange gain or loss, should be entered on line 5 only for FDEs or FBs that use DASTM.

Line 7

Enter the line 6 functional currency amount translated into U.S. dollars at the average exchange rate for the FDE or FB's tax year. See section 989(b). Report the exchange rate using the "divide-by convention" specified under [Reporting Exchange Rates on Form 8858](#), earlier. If the FDE or FB uses DASTM, enter on line 7 the same amount entered on line 6.

Blocked income. The E&P or taxable income of the FDE or FB, as reflected on Schedule H, must not be reduced by all or any part of such E&P or taxable income that could not have been distributed by the FDE or FB due to currency or other restrictions or

limitations imposed under the laws of any foreign country.

Schedule I

Important. Schedule I should be completed if the FB or FDE is owned:

- Directly by a domestic corporation, or
- Indirectly by a domestic corporation through a tiered structure of FDE's or FBs.

Schedule I should not be completed if the FB or FDE is owned by a CFC.

Line 1

Check "Yes," if any assets of an FB (or a branch that is an FDE) were transferred to a foreign corporation during the tax year. If "Yes," continue to line 2, otherwise check "No", and do not complete the rest of Schedule I.

Line 2

Check "Yes," if the transferor was a domestic corporation that transferred substantially all of the assets of an FB (or a branch that is an FDE) to a specified 10-percent owned foreign corporation. A specified 10 percent owned foreign corporation is defined in section 245A(b)(1) as any foreign corporation with respect to which any domestic corporation is a United States shareholder with respect to such corporation. If "Yes," continue to line 3.

Line 3

Check "Yes," if the transferor was a domestic corporation and immediately after the transfer the domestic corporation was a U.S. shareholder (10 percent or more shareholder) with respect to the transferee foreign corporation. If "Yes," continue to line 4, otherwise stop.

Line 4

Under section 91, the U.S. transferor must include in gross income an amount equal to the transferred loss amount (TLA), if any, as defined in section 91(b) upon a transfer of substantially all of the assets of an FB (including an FB that is an FDE) to a foreign corporation. The TLA is the sum of losses incurred by the foreign branch or FDE or FB after December 31, 2017 and before the transfer and with respect to which a deduction was allowed to the U.S. transferor reduced by the sum of 1) any taxable income of such branch for a tax year after the tax year in which the loss was incurred and through the close of the taxable year of the transfer and 2) any amount recognized under section 904(f)(3) resulting from the transfer. See

also P.L. 115-97, section 14102(d)(4) for the transition rule of section 91.

The TLA amount may be reduced (but not below zero) by the amount of gain recognized on account of the transfer, other than the amounts recognized under section 904(f)(3), if any. Enter the amount of the TLA included in gross income as a positive number on line 4.

If the amount is equal to or less than zero, enter zero and no TLA is required to be recognized by the U.S. transferor on the transfer under section 91. If the amount is greater than zero, enter the TLA on line 4 and report this amount as other income on the applicable Form 1120 (for Form 1120 filers, page 1, Line 10, Other Income) and identify the amount as "Section 91 Transferred Loss Amount." In addition, attach a "Schedule I - Transferred Loss Amount Additional Information" statement to the Form 8858 and provide the following information.

- A detailed calculation of the transferred loss amount reflecting amounts of the losses generated by such foreign branch after December 31, 2017 by year and any income amounts by year generated after such loss year.
- The amount, if any, recognized under section 904(f)(3) on account of the transfer.
- A detailed summary of the gain recognized (other than section 91) by the transferor, including any section 367(a)(1) gain on the transfer of property.
- A calculation of the net sum of the previously deducted losses incurred by such foreign branch for tax years prior to January 1, 2018 that would have been recaptured under section 367(a)(3)(C), as determined without regards to the repeal of the section 367(a)(3) active trade or business exception by P.L. 115-97, section 14102.

Schedule J

List income, war profits, and excess profits taxes ("income taxes") paid or accrued to the United States and to each foreign country or U.S. possession for the foreign entity's foreign tax year(s) that end with or within its U.S. taxable year. Do not report taxes that are not creditable, including taxes for which a

credit is disallowed under section 901(j), (k), (l) or (m).

Except as provided below, adjustments to foreign income taxes paid or accrued in a prior year should not be reflected on the Form 8858 in the year of adjustment. Instead, they are reported in the year to which such taxes relate. This may require an amended return. See section 905(c) as amended by P.L. 115-97. Adjustments include additional payments, refunds and downward adjustments for accrued foreign taxes that are not paid within two years after the close of the tax year to which such taxes relate.

Exceptions. With respect to entities that are owned by a foreign corporation, adjustments in such entities' taxable years which end with or within the foreign corporation's taxable years beginning on or before December 31, 2017, to foreign income taxes paid or accrued in a prior year by the foreign entity are reported in the year of adjustment. See section 905(c) before amendment by P.L. 115-97. Report adjustments to foreign taxes paid or accrued for each prior year on a separate line. In column (a), following the two-letter country code, include the tax year (YYYY-MM-DD) to which the tax relates. Report refunds and other downward adjustments in columns (b) and (d) as negative amounts.

With respect to entities owned directly by a United States person, certain de minimis adjustments may be taken into account in the year of such adjustment. See section 1.905-3T(d)(1).

Column (a). Enter the two-letter country code (from the list at [IRS.gov/CountryCodes](https://www.irs.gov/CountryCodes)) of all foreign countries and U.S. possessions within which income is sourced and/or to which taxes were paid, accrued, or deemed paid.

Enter the foreign tax year (YYYY-MM-DD) of the foreign entity to which the tax relates.

Columns (b) through (d). Report income taxes in column (b) in the local currency in which the taxes are payable. Translate these amounts into U.S. dollars at the average exchange rate for the tax year to which the tax relates unless one of the exceptions below applies. See section 986(a).

Exceptions. If one of the following exceptions applies, use the exchange rate in effect on the date the foreign entity paid the tax.

1. The tax is paid before the beginning of the year to which the tax relates.
2. Accrued taxes are not paid before the date two years after the close of the taxable year to which such taxes relate.
3. There is an election in effect under section 986(a)(1)(D) to translate foreign taxes using the exchange rate in effect on the date of payment.
4. The foreign entity reports on the cash basis. See section 986(a).

Enter the exchange rate used in column (c). Report the exchange rate using the "divide-by convention" specified under [Reporting Exchange Rates on Form 8858](#), earlier. Enter the translated dollar amount in column (d).

Columns (e) through (h). Enter the amount by separate category of income in columns (e) through (h).

Example 1. A foreign entity owned by a foreign corporation pays or accrues tax of 10u = \$10 to Country X with respect to the entity's foreign tax year ending November 30, 2018, and also receives in that year a refund of 3u from Country X with respect to the entity's foreign tax year ending November 30, 2015, that was originally translated to equal \$5. All taxes relate to general category income. The following entries should be made in Schedule J.

- On Line 1,
- column (a): Country Code XX 2018-11-30,
 - column (b): 10u
 - column (c): 1.0000
 - column (d): \$10
 - column (g): \$10

- On Line 2,
- column (a): Country Code XX 2015-11-30
 - column (b): (3u)
 - column (c): 0.6000
 - column (d): (\$5)
 - column (g): (\$5)

See the filled in example of Schedule J below.

Example 1

Schedule J	Income Taxes Paid or Accrued (See Instructions)						
	Foreign Income Taxes			Foreign Tax Credit Separate Categories			
(a) Country or Possession	(b) Foreign Currency	(c) Conversion Rate	(d) U.S. Dollar	(e) Foreign Branch	(f) Passive	(g) General	(h) Other
XX 2018-11-30	10	1.0000	10			10	
XX 2015-11-30	(3)	0.6000	(5)			(5)	
Totals			5			5	

Example 2. A foreign entity pays or accrues tax of 10u = \$10 to Country X with respect to the entity's foreign tax year ending November 30, 2019, and with respect to a 21u liability that was originally translated to equal \$35, receives a refund of 3u from Country X with respect to the entity's foreign tax year ending November 30, 2015, that was originally translated to equal \$5. All taxes relate to general category income. The following entries should be made on Schedule J of the Form 8858 filed for the foreign tax year ending November 30, 2019.

- column (a): Country code XX 2018-11-30
- column (b): 10u
- column (c): 1.0000
- column (d): \$10
- column (g), \$10

The following entries should be made on Schedule J of the amended form 8858 filed for the foreign tax year ending November 30, 2015.

- column (a): Country code XX 2015-11-30
- column (b): 18u
- column (c): 0.6000
- column (d): \$30
- column (g), \$30

For additional instructions on the reporting of foreign taxes for entities filing a Form 8858 that are owned by a foreign corporation, see instructions of Form 5471 Schedule E.

For purposes of column (h), enter foreign taxes related to a separate category of income not otherwise listed in columns (e), (f) or (g). Identify the taxes with respect to each separate category of income. For example, if a foreign entity pays taxes to Country A that are related to two separate categories of income, report the taxes related to the first separate category on one line and the taxes related to the other separate category on another line. For purposes of determining the applicable categories of income, see Categories of Income in the Instructions

for Form 1118 or in the Instructions for Form 1116, as applicable.

Schedule M

Important: In translating the amounts from functional currency to U.S. dollars, use the average exchange rate for the FDE's or FB's tax year. See section 989(b). Report the exchange rate in the entry space provided at the top of Schedule M (Form 8858) using the "divide-by convention" specified under [Reporting Exchange Rates on Form 8858](#), earlier.

A Schedule M must be filed with each Form 8858 if the FDE or FB entered into any transaction with the filer of the Form 8858 or other related entities during the annual accounting period of the FDE or FB.

Every U.S. person that is required to file Schedule M (Form 8858) (see [Who Must File](#), earlier) must file the schedule to report the transactions that occurred during the FDE's or FB's annual accounting period ending with or within the U.S. person's tax year.

If a U.S. corporation is the U.S. person filing Schedule M (Form 8858) and is a member of a consolidated group, list the common parent as the U.S. person filing Schedule M (Form 8858).

Reference ID number. A reference ID number for the FDE or FB identified on Schedule M (Form 8858), is required if no EIN is provided. However, filers are permitted to provide both an EIN and reference ID number. For more information on the reference ID number, see [Line 1b\(2\) Reference ID Number](#), earlier.

Column headings. There are 3 sets of column headings above lines 1 through 19. The first set of column headings is to be used in cases where the tax owner is a CFP. The second set of column headings is to be used in cases where the tax owner is a CFC. The third set of column headings is to be used in cases

where the tax owner is a U.S. person. If you are completing Schedule M (Form 8858) for an FDE or FB for which the tax owner is a CFP, check the box for CFPs and complete lines 1 through 19 using the headings in columns (a) through (e) of the CFP set of columns. If you are completing Schedule M (Form 8858) for an FDE or FB for which the tax owner is a CFC, check the box for CFCs and complete lines 1 through 19 using the headings in columns (a) through (f) of the CFC set of columns. If you are completing Schedule M (Form 8858) for an FDE or FB for which the tax owner is a U.S. person, check the box for U.S. Tax Owner and complete lines 1 through 19 using the headings in columns (a) through (e) of the U.S. Tax Owner set of columns.

Column (e). For CFP or CFC owned FDEs or FBs, use column (e) to report transactions between the FDE or FB and any U.S. person with a 10% or more direct interest in the CFP or any 10% or more U.S. shareholder of any corporation controlling the CFC. If you are a Category 1 filer of Form 8865, or a Category 4 filer of Form 5471, do not report transactions between yourself and the FDE or FB under column (e). Report the transactions only under column (b).

U.S. tax owner. The following instructions for columns (b) – (e) apply only to FDE or FB with a U.S. tax owner.

Column (b). Use column (b) to report transactions between the FDE or FB with the U.S. person filing this return only if the U.S. person filing this return is other than the tax owner of the FDE or FB. If the U.S. person filing this return is the tax owner of the FDE or FB, do not enter any amounts in column (b).

Column (c). Use column (c) to report transactions between the FDE or FB with any domestic corporation or partnership controlled by the filer. Do not include any transactions between

the FDE or FB with its direct U.S. tax owner that are treated as disregarded for U.S. tax purposes in column (c).

Column (d). Use column (d) to report transactions between the FDE or FB with any foreign corporation (including its FBs or FDEs) controlling or controlled by the filer. This will include any transactions between the FDE or FB with any foreign corporation (includes its FBs or FDEs) controlling or controlled by the FDE or FB U.S. tax owner, if the U.S. tax owner of the FDE or FB is not the U.S. person filing the return.

Column (e). Use column (e) to report transactions between the FDE or FB with any foreign (including hybrid) partnerships (including its FBs or FDEs) controlling or controlled by the filer. This will include any transactions between the FDE or FB with any foreign (including hybrid) partnership (includes its FBs or FDEs) controlling or controlled by the FDE or FB U.S. tax owner, if the U.S. tax owner of the FDE or FB is not the U.S. person filing the return.

Line 6. Report on line 6 dividends received by the FDE that were not

previously taxed under subpart F in the current year or in any prior year.

Lines 18 and 19. Report on lines 18 and 19 the largest outstanding balances during the year of gross amounts borrowed from, and gross amounts loaned to, the related parties described in columns (b) through (f). Do not enter aggregate cash flows, year-end loan balances, average balances, or net balances. Do not include open account balances resulting from sales and purchases reported under other items listed on Schedule M (Form 8858) that arise and are collected in full in the ordinary course of business.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form and related schedules will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
8858	17 hr., 56 min.	4 hr., 10 min.	4 hr., 38 min.
Sch. M (Form 8858)	24 hr., 9 min.	6 min.	30 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form and related schedules simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.