

Part IV - Items of General Interest

Information Reporting With Respect to Foreign Disregarded Entities

Announcement 2004-4

The Internal Revenue Service (the "Service") and the Treasury Department (the "Treasury") announce that they are requesting comments from the public on proposed new Form 8858, Information Return of U.S. Persons With Respect to Foreign Disregarded Entities. The form will be required to be filed by U.S. persons that own a foreign disregarded entity (FDE) directly or, in certain circumstances, indirectly or constructively (for example, U.S. persons that own a 10 percent or greater interest in an FDE indirectly through a controlled foreign corporation (CFC) or controlled foreign partnership (CFP)). An FDE is an entity that is created or organized in a foreign jurisdiction and that is disregarded as separate from its owner for U.S. income tax purposes under section 301.7701-2 and -3 of the Income Tax Regulations. The reporting of information on Form 8858 will be required under the authority of sections 6011, 6012, 6031 and 6038 of the Internal Revenue Code and the related regulations, for annual accounting periods of tax owners of FDEs beginning on or after January 1, 2004. Attached to this announcement is a copy of the proposed form, with respect to which the Service and the Treasury are requesting comments from the public.

BACKGROUND

Proposed Form 8858 was developed to enable the Service to administer more efficiently the provisions of the tax law with respect to U.S. persons that own FDEs. The promulgation of the elective entity classification regulations in 1997 has facilitated the use of FDEs by U.S. persons with cross-border investments or operations. The Service has had significant difficulties administering the relevant provisions of the tax law because the information reporting requirements still date from a time when the substantive entity classification rules did not contemplate disregarded entities. The current lack of relevant information reporting with respect to FDEs has hindered the Service's ability to identify potential compliance issues efficiently and effectively. The Service is committed to reducing the length of the corporate examination process and improving the currency of examinations. The information to be reported on Form 8858 will help the Service identify

issues more efficiently, ensuring that the Service can better focus resources and reduce exam cycle time.

PROPOSED FORM 8858

Proposed Form 8858 is three pages long, and consists of one section and five schedules, plus a separate Schedule M. The introductory section of proposed Form 8858 requests identifying information. The schedules to proposed Form 8858 include requests for abbreviated income statement information (Schedule C), abbreviated balance sheet information (Schedule F), and summary information regarding taxable income or earnings and profits (Schedule H). Schedule C-1 requests information relating to the foreign currency rules applicable to foreign disregarded entities, and Schedule G consists of six specific yes/no questions. Schedule M requests information regarding related party transactions between an FDE owned by a CFP or a CFC and a related person other than the CFP or CFC. Information regarding transactions between an FDE and its tax owner or between or among FDEs of the same tax owner is not requested, except where such information is required to administer provisions of the tax law that recognize inter-branch transactions, such as the foreign currency rules.

To ensure that taxpayer burden is minimized, each item of information requested on proposed Form 8858 has been evaluated to make certain that it is necessary to the administration of the tax law and that it is not duplicative of information already required to be reported. Proposed Form 8858 requests only the minimum information needed to identify the tax items that are attributable to an FDE. Almost all of the items of information requested from U.S. persons on proposed Form 8858 with respect to an FDE are currently required to be reported by such U.S. persons on an aggregate basis on, for example, Form 5471 (in the case of FDEs of CFCs) or Form 8865 (in the case of FDEs of CFPs).

Consistent with the objectives of proposed Form 8858 and consistent with section 6038 of the Code, with a view to minimizing taxpayer burden and aiding Service efforts to reduce exam cycle time, the Service and the Treasury also intend to review Forms 5471 and 8865 to ensure that the information requested on these forms enables the Service to administer effectively the tax law applicable to U.S. owners of CFCs and CFPs, is necessary to the administration of the tax law, and is not duplicative of information required to be reported on proposed Form 8858 or other forms.

GENERAL QUESTIONS ABOUT FORM 8858

Who will be required to file Form 8858?

Form 8858 will be required to be filed by U.S. persons that are tax owners (as

defined below) of FDEs, or that own certain interests in foreign tax owners of FDEs.

Specifically, U.S. persons that are tax owners of FDEs would complete the entire Form 8858 except for Schedule M. In the case of U.S. persons that are required to file a Form 5471 with respect to a CFC that is a tax owner of an FDE, such U.S. persons that are Category 4 filers of Form 5471 would complete the entire Form 8858 and separate Schedule M. U.S. persons that are Category 5 filers of Form 5471 (*i.e.*, noncontrolling shareholders) would complete only the identifying information on page 1 of Form 8858, and Schedules G and H. Schedule M would not be required from Category 5 filers of Form 5471.

In the case of U.S. persons that are required to file a Form 8865 with respect to a CFP that is a tax owner of an FDE, such U.S. persons that are Category 1 filers of Form 8865 would complete the entire Form 8858 and separate Schedule M. U.S. persons that are Category 2 filers of Form 8865 (*i.e.*, noncontrolling partners) would complete only the identifying information on page 1 of Form 8858, and Schedules G and H. Schedule M would not be required from Category 2 filers of Form 8865.

Who is the tax owner of an FDE?

For purposes of completing the Form 8858, 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.

Who is the direct owner of an FDE?

For purposes of completing the Form 8858, 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 percent partner of CFP, a controlled foreign partnership. FDE 1 is a foreign disregarded entity owned by CFP, and FDE 2 is a foreign disregarded entity 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.

When will Form 8858 be required to be filed?

Form 8858 will be due when the filer's U.S. income tax or information return is due, including extensions.

How will Form 8858 be filed?

The filer will be required to file Form 8858 as an attachment to the filer's U.S. income tax or information return. In the case of a filer that is not the tax owner of the FDE, the filer will be required to attach Form 8858 to any form filed by the filer with respect to the foreign entity that is the tax owner of the FDE.

For example, where a U.S. person indirectly owns an FDE through a CFC, the CFC is the tax owner of the FDE. In this instance, the U.S. person will be required to file a Form 8858 because it indirectly owns the FDE through a CFC. The Form 8858 will be required to be filed as an attachment to the Form 5471 filed with the U.S. person's U.S. income tax return.

A separate Form 8858, including Schedule M if required to be filed, will be required for each FDE.

Will there be any exceptions to filing Form 8858?

Instructions for the Form 8858 will provide filing exceptions similar to those set forth in the instructions for Form 5471 and Form 8865. For example, exceptions from filing for multiple filers of the same information, for members of consolidated groups, and for owners of dormant FDEs will apply for purposes of Form 8858.

What is the effective date for Form 8858?

Form 8858 will be required to be filed for annual accounting periods of tax owners of FDEs beginning on or after January 1, 2004.

Can Form 8858 be filed electronically?

The instructions for filing Form 8858 will include information on electronic filing.

REQUEST FOR COMMENTS ON THE FORM

The Service and the Treasury are requesting comments about proposed Form 8858. The Service and the Treasury are particularly interested in receiving comments on matters that should be addressed in the instructions to Form 8858, such as whether clarification is needed as to specific aspects of the filing requirements or the information requested on the form. The Service and the Treasury also are requesting comments about current Forms 5471 and 8865, in particular whether any modifications are necessary in light of proposed Form 8858 to ensure that the information requested on Forms 5471 and

8865 is necessary to the administration of the tax law and is not duplicative of information required to be reported on proposed Form 8858 or other forms. Written comments should be sent to: Tax Products Coordinating Committee, Internal Revenue Service, SE:W:CAR:MP:T, Room 6406, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Alternatively, comments may be e-mailed to tfpmail@publish.no.irs.gov. Comments must be received by March 1, 2004.

The principal author of this announcement is Alexandra Helou of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury and the IRS participated in its development. For further information regarding this announcement contact Alexandra Helou at (202) 622-3840 (not a toll-free call).