



APRIL 17, 2018, FINAL DATE TO COMPLY WITH THE NEW REPORTING REQUIREMENTS FOR DISREGARDED ENTITIES WITH A FOREIGN OWNER

On December 13, 2016, final regulations were issued regarding new reporting requirements for domestic disregarded entities wholly owned by a nonresident, whether the nonresident owner is an individual or an entity. The most typical domestic disregarded entity is a single member Limited Liability Company (*Single Member LLC*).

These rules are in effect for tax years beginning on or after January 1, 2017 and they are extremely relevant now since we are in tax season for the year 2017. The new rules do not apply if the Single Member LLC has already made the election to be treated as a corporation.

Historically, for tax purposes, a foreign-owned U.S. disregarded entity was just that – disregarded. The reporting taxpayer was the owner of the disregarded entity, whether the owner was an individual or an entity.

Under the new requirements, a domestic disregarded entity will have a pro-forma corporate filing requirement with forms that disclose transactions with related parties. The types of transactions that are covered by this reporting relate to amounts paid or received in connection with the formation, dissolution, acquisition and disposition of the entity, including contributions to and distributions from the entity. Among the type of transactions that will require disclosure are sales, cost-sharing transaction payments, rents, royalties, leases, licenses, commissions, loans, interest, etc.

The penalty for failure to file when due and in the manner prescribed by the IRS

or even the failure to maintain records as required under the law is \$10,000. If a taxpayer is notified by the IRS of a failure to file and the failure continues for more than 90 days after notification by the IRS, an additional penalty of \$10,000 will apply.

MAIN CONSEQUENCES FOR SINGLE MEMBER LLC:

Obtain a U.S. tax identification number for the company;

File IRS *Form 5472* by April 17;

Maintain the appropriate records in order to comply with the requirements. Such records must be permanent, accurate, and complete, and must clearly establish income, deductions, and credits.

FREQUENTLY-ENCOUNTERED SCENARIOS

Scenario 1: A U.S. Single Member LLC, owned by a foreign individual, holds rental U.S. real estate. In addition to filing his personal tax return, the taxpayer will now have an entity filing requirement to report specific transactions.

Scenario 2: A U.S. Single Member LLC, owned by a foreign corporation, holds U.S. real estate for investment purposes (i.e., not rented). Previously, neither the foreign corporation nor the Single Member LLC had U.S. tax filing requirements until disposal of the real estate. Under the new rules, the Single Member LLC has a filing requirement every year to report the above specified transactions.

Scenario 3: A U.S. Single Member LLC, owned by a foreign corporation, holds U.S. real estate and rents the property. Previously, the foreign corporation had a corporate filing requirement with related IRS Form 5472, if applicable. Under the new rules, the foreign corporation is still required to file a corporate tax return and a related IRS Form 5472, if applicable. However, the Single Member LLC also has an entity filing requirement with disclosure of related party transactions on IRS Form 5472 that may be much more comprehensive than what required to be disclosed by the foreign corporation.

This article contains general information and does not in any way replace the assistance of a lawyer. We suggest that you contact a professional for further information and assistance. Taking a lawyer is an important decision that should not be based solely on advertising information. Before deciding, please ask us for free written information about our qualifications and experience. The Piero Salussolia PA company, founded in 1994 by Piero Salussolia, provides specialized and customized assistance to international clients in International and National Tax Law and Financial Planning, Corporate Law and Real Estate, Intellectual Property, Commercial and Contract Law, Maritime Law and Immigration Law. Born in

Alice Castello, Italy, Piero Salussolia has been a forensic profession in the United States and has been a member of the Florida Bar Association since 1985 and California since 1984. Piero Salussolia has been a member of the section of International Law and the Taxation Section of Florida (where he served as Vice President of the Foreign Fiscal Committee from 1989 to 1992). Piero Salussolia was founding member of the South East Chapter of the South American Chamber of Commerce, where he served as Executive Vice President. Piero Salussolia holds a bachelor's degree in Political Science at the University of Torino, a Political Science Master at the San Francisco State University, a law degree at the University of San Francisco, and a Master of Tax Law at New York University. Salussolia Lawyer has started his career at a prestigious Miami law firm; He then joined the local headquarters of an internationally renowned international law firm, which became an international partner focusing on International Tax Law. For services rendered to the Italian community, he was awarded the honor of the Knight of the Republic. Piero Salussolia currently speaks Italian, Spanish, French and English