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## IRS Issues Final Regulations Imposing Information Reporting on Foreign-owned Domestic Disregarded Entities

The Treasury Department and the IRS have issued final regulations (T.D. 9796, <https://www.gpo.gov/fdsys/pkg/FR-2016-12-13/pdf/2016-29641.pdf>) that treat a domestic disregarded entity wholly owned by a foreign person as a domestic corporation separate from its owner for the limited purposes of the reporting, record maintenance and associated compliance requirements that apply to 25 percent foreign-owned domestic corporations under Section 6038A (section references are to the Internal Revenue Code of 1986, as amended). The final regulations contain a limited number of changes to the proposed regulations (see our prior coverage at <http://www.stradley.com/insights/publications/2016/tax-insights-2016/tax-insights-may-18-2016>). For example, consistent with the intent of the Treasury Department and the IRS that the generally applicable exceptions to the requirements of Section 6038A should not apply to a domestic disregarded entity, the reporting requirements of the proposed regulations should apply without regard to the exceptions generally applicable under Treasury Regulations Sections 1.6038A-2(e) (3) and (4) (those exceptions cover transactions with a corporation subject to reporting under Section 6038 and transactions with a foreign sales corporation). Accordingly, such exceptions are revised in the final regulations. Second, to facilitate entities' compliance with the requirements of Section 6038A, including the obligation of reporting corporations to file Form 5472 (Information Return of a 25 percent Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business), the final regulations provide that these entities have the same taxable year as their foreign owner if the foreign owner has a U.S. return filing obligation. If the foreign owner has no U.S. return filing obligation, then for ease of tax administration, the final regulations provide that the taxable year of these entities is the calendar year unless otherwise provided in forms, instructions or published guidance. Third, the Treasury Department and the IRS have concluded that for ease of administration, these regulations should apply to taxable years of entities beginning on or after Jan. 1, 2017, and ending on or after Dec. 13, 2017.

## IRS Issues Final Regulations on Tax Treatment of Outbound Transfers of Intangibles

The IRS issued final regulations (T.D. 9803, <https://www.gpo.gov/fdsys/pkg/FR-2016-12-16/pdf/2016-29791.pdf>) relating to certain transfers of property by United States persons to foreign corporations. The final regulations affect United States persons that transfer certain property, including foreign goodwill and going concern value, to foreign corporations in nonrecognition transactions described in Section 367. The regulations also combine certain sections of the existing regulations under Section 367(a) into a single section, and certain temporary regulations are withdrawn. Consistent with the proposed regulations (see our prior coverage at <http://www.stradley.com/insights/publications/2015/tax-insights-web-versions/tax-insights-september-23-2015>), the final regulations eliminate the favorable treatment of foreign goodwill and going concern value contained in the 1986



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temporary regulations. The Treasury Department and the IRS have determined that this change is necessary to carry out the tax policy embodied in Section 367 in a fair, impartial and reasonable manner, taking into account the intent of Congress, the realities of relevant transactions, the need for the IRS to administer the rules and monitor compliance, and the overall integrity of the federal tax system. Additionally, the final regulations provide that taxpayers may, in the year of transfer, choose to take into account Section 367(d) inclusions only during the 20-year period beginning with the first year in which the U.S. transferor takes into account income pursuant to Section 367(d). However, the Treasury Department and the IRS have determined that this optional limitation should not affect the present value of all amounts included by the taxpayer under Section 367(d). Accordingly, the final regulations specifically require a taxpayer who chooses to limit Section 367(d) inclusions to a 20-year period to include, during that period, amounts that reasonably reflect amounts that, in the absence of the limitation, would be required to be included over the useful life of the transferred property following the end of the 20-year period. The final regulations generally apply to transfers occurring on or after Sept. 14, 2015, the date the proposed regulations were filed with the Federal Register, and to transfers occurring before Sept. 14, 2015, resulting from entity classification elections made under Treasury Regulation Section 301.7701-2 that are filed on or after Sept. 14, 2015.

### **IRS Rules on Consequences of Settlement Involving REMICs**

In Private Letter Ruling 201650011(<https://www.irs.gov/pub/irs-wd/201650011.pdf>), the IRS ruled that in the case of each taxpayer for which a timely, valid and continuing

(REMIC) election has been made in accordance with an applicable governing agreement, none of (i) the execution of a certain settlement agreement (related to a breach of certain representations and warranties in the governing agreement), (ii) the methodology for determining, and the right to receive, an allocable share of a settlement payment or (iii) the receipt of an allocable share of the settlement payment will cause the taxpayer to fail to meet the requirements of Section 860D(a) (4). Further, in the case of each taxpayer for which a timely, valid and continuing REMIC election has been made in accordance with an applicable governing agreement, (i) the receipt of an allocable share of the settlement payment will be treated as a payment received on qualified mortgages within the meaning of Section 1.860G-2(g)(1)(ii), (ii) the distribution of an allocable share amount in accordance with the applicable agreement and the settlement agreement will not cause any regular interest in such taxpayer to fail to qualify as a “regular interest” as defined in Section 860G(a) (1) or the sole class of residual interest in such taxpayer to fail to qualify as a “residual interest” as defined in Section 860G(a)(2), and (iii) the receipt of an allocable share amount will not be treated as a “prohibited transaction” within the meaning of Section 860F(a)(2) or as a contribution that is subject to the tax imposed under Section 860G(d)(1).

### **REIT Stock Not Treated as Owned by Single Qualified Trust**

In similar rulings (Private Letter Ruling 201650002 <https://www.irs.gov/pub/irs-wd/201650002.pdf> and 201650003 <https://www.irs.gov/pub/irs-wd/201650003.pdf>), the IRS ruled that solely for purposes of determining whether a REIT held by a taxpayer is a “pension-held REIT” (as such term is defined in Section 856(h)(3)(D)), pursuant to the principles in Rev. Rul. 2011-1, to the extent the stock of a REIT is treated as owned by the taxpayer, such stock will not be treated as owned by a single “qualified trust” (as such term is defined in Section 856(h)(3)(E)) solely due to the taxpayer’s ownership. The concentration of ownership in a REIT held by the taxpayer will be determined by examining the interests equitably held for each participating entity separately, because the taxpayer is an 81-100 group trust.

### **2016 Guyana-U.S. FATCA Competent Authority Arrangement Available**

The Guyanan and U.S. competent authorities have signed an arrangement ([https://www.irs.gov/pub/fatca/guyana\\_competent\\_authority\\_arrangement.pdf](https://www.irs.gov/pub/fatca/guyana_competent_authority_arrangement.pdf)), under the two nations’ 2016 intergovernmental agreement to implement the information reporting and withholding tax provisions of FATCA.

## IRS Releases Draft Form 8975 and Schedule A for Form 8975, CbC Reporting

The IRS has released a draft version of Form 8975 (<https://www.irs.gov/pub/irs-dft/f8975--dft.pdf>), “Country by Country Report,” and Form 8975, Schedule A (<https://www.irs.gov/pub/irs-dft/f8975sa--dft.pdf>), “Tax Jurisdiction and Constituent Entity Information,” for annual reporting by U.S. persons that are the ultimate parent entity of a multinational enterprise group with annual revenue for the preceding accounting period of \$850 million or more.

## IRS Updates FATCA Online Registration User Guide

The IRS has released Publication 5118 (rev. Dec. 2016), FATCA Online Registration User Guide (<https://www.irs.gov/pub/irs-pdf/p5118.pdf>), for financial institutions and direct reporting nonfinancial foreign entities (NFFEs) registering online as a participating foreign financial institution (FFI), a registered deemed-compliant FFI, a limited FFI, a direct reporting NFFE or other entity.

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