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Complex Reporting is Now Even More Complex

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In December 2018, the Internal Revenue Service (IRS) revised and expanded Form 5471. The aim was to require additional reporting and also to encompass the compliance related to the new international tax provisions enacted as part of the Tax Cut and Jobs Act of 2017 ("TJIC").

Background

Although Form 5471 has been around for many years, it has gained significantly more importance as a result of the passing of the Foreign Account Tax Compliance Act ("FATCA") in 2010 and the TJIC. It is essentially an information return attached as a supplement to a US "person's" (individual, corporation, partnership, trust, or estate) tax return filing requirement in the US (Form 1040, 1065, 1120, etc.). Its disclosures can become enhanced based on meeting the definition of some or all of the five categories of filers. If you are a US person with a 10% or more ownership in a foreign corporation, the IRS wants to know about it.

What's New?

The reporting requirements have been substantially expanded, making the disclosures more complex. The new form has grown from eight to 16 pages, and there have been substantial changes to the schedules. Although most new disclosures have come about to track the international tax requirements of the TJIC, previous disclosures now require the breaking down of previously reported aggregate numbers; for example, Earnings & Profit components on schedule J. According to the experts at Marcum, this may result in a substantial amount of additional work for taxpayers that have not previously kept this information in an expanded format or in this detail.

Highlights of the new expanded disclosures include:

- New category 1 filer (previously repealed) now used for US shareholders of specified foreign corporations subject to the provisions of the transition tax under Section 965.
- Expansion of Part B to determine information about direct shareholders of the foreign corporation. This is expanded to include, in some instances, indirect ownership and ownership by a foreign disregarded entity.
- The Schedule C income statement has added lines to capture foreign currency gains and losses, both realised and unrealised.
- Other information on Schedule G has expanded from 8 questions to 19. These now include base erosion payments, intangibles, reorganisations, and information on foreign taxes, among others. The schedule now requires dollar amounts instead of just a "yes or no."
- Schedule I-1 contains new information needed to compute the shareholder inclusion under the Global Intangible Low Taxed Income ("GILTI") provisions.
- Schedule J doubled in length and requires significant new information.

> *With Form 5471, the IRS has developed one of the most complex and complicated tax forms ever. We will support you in the correct implementation and discuss the many new details with you.*

— Chuck Gill, CPA, J.D., LL.M, Tax & Business Services Director, Marcum LLP, Hartford CT, USA

Penalties for Non-Compliance

The IRS wants to know what you're up to and if you fail to tell them, there are consequences. Form 5471 information is something you must disclose if you want to operate offshore. If you are a US person that has an interest in a foreign corporation and/or who is an officer or director in certain foreign corporations, the reporting is similar to a corporate form 1120, with an income statement and balance sheet line item disclosures.

Failure to file the form or incomplete filing of the form is subject to significant penalties:

- USD 10,000 for each annual accounting period of the foreign corporation that was not filed.
- Additional penalties up to USD 50,000 if filing requirements are not met within 90 days of an IRS notice.
- Disallowance of any foreign tax credits available to be claimed for failure to file.
- Additional penalties applicable under other code sections including criminal penalties, penalties for undisclosed foreign financial asset understatements, and preparer penalties.
- If the form is not filed or the form is considered "not substantially complete," the statute of limitations will not begin on the filed tax return.

Conclusion

The increased complexities of additional reporting, although somewhat onerous, are not as difficult as having to break down prior cumulative balances for compliance with more detailed reporting requirements, explain the experts from Marcum LLP. Even a good faith effort could result in an incomplete return, resulting in a plethora of penalties as described above, even if there is no tax liability on the return to which the 5471 disclosure is attached.

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