
MEMORANDUM

RE: INTERNATIONAL TAX COMPLIANCE
 FOREIGN ASSETS (U.S. TAXPAYERS)
 #6: FOREIGN DISREGARDED ENTITY (U.S. OWNER)
 FORM 8858

Does The Taxpayer Own An Interest In A Foreign Disregarded Entity?

Special reporting rules also apply to U.S. Persons who are owners of a foreign disregarded entity.

Any U.S. Person that is treated as the owner of the assets or liabilities of a foreign disregarded entity is required to file a Form 8858 with its timely filed income tax return, including extensions.

A foreign disregarded entity is simply an entity organized outside the United States that, under the check-the-box regulations, is treated as a disregarded entity. The penalties for failing to file a Form 8858, which include (1) a fixed \$ 10,000 penalty, (2) 10 percent foreign tax reduction, and (3) additional penalties for failure to respond to an IRS notice of violation.

The disregarded status of the foreign entity is determined under U.S. law (not the law under which the entity was organized).

A U.S. Person that controls a foreign corporation or a foreign partnership, which corporation or partnership owns a foreign disregarded entity, may also have a reporting obligation. A U.S. Person may be required to file a Form 8858, even when (i) the person has no direct ownership in the foreign disregarded entity, and (ii) the constructive or indirect ownership is less than 100 percent.

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