



IRS Reporting Requirements for Foreign-Owned U.S. Disregarded Entities: Understanding Form 5472 and Penalties

IRS reporting requirements for Foreign-Owned U.S. disregarded entities: What You Need to Know

Many foreign nationals set up a U.S. Limited Liability Company (LLC) in the United States to hold real estate or conduct business. This is the most common, but not the only type, of U.S. disregarded entity subject to foreign information disclosure rules. This article will focus on LLCs since this type of structure is the most common. These single-member LLCs are typically "disregarded entities" for tax purposes. This means the IRS ignores the LLC itself and taxes only the owner.

For years, this structure came with minimal paperwork. That changed in 2017.

Federal regulations now require foreign-owned U.S. LLCs to file annual reports with the IRS. These reports must disclose transactions with related parties. The filing requirement applies even if your LLC earns no income and has no tax liability. For example, a vacation home in the United States owned in a single-member LLC.

Penalties for missing these filings are severe. The IRS can assess \$25,000 per form per year for non-compliance.

This guide explains who must file, what information you must report, and how to stay compliant.

A single member LLC (SMLLC) can make an election to be treated as a U.S. corporation, the new regulations do not apply in this case as the entity would no longer be disregarded for tax purposes. It should be noted that Form 5472 may still be required to be prepared as part of the corporate income tax filing for an entity making this election.

Penalties for Non-Compliance

The penalties for Form 5472 violations are substantial.

Initial penalty: \$25,000 per form for failure to file or filing an incomplete form. This penalty increased from \$10,000 effective January 1, 2018.

Continuing failure: If you receive IRS notice of failure to file and don't correct it within 90 days, the IRS can assess an additional \$25,000 for each 30-day period the failure continues. If the failure continues for more than 90 days after notification by the IRS, an additional penalty of \$25,000 will apply. This penalty applies with respect to each related party for which a failure occurs for each 30-day period (or part of a 30-day period) during which the failure continues after the 90-day period ends.

Substantially Incomplete: The IRS considers a form "substantially incomplete" the same as not filing at all. This means missing critical information can trigger the full penalty even if you submitted something.

Criminal penalties may also apply for failure to submit information or for filing false or fraudulent information.

What Is considered a U.S. Disregarded Entity?

A SMLLC is automatically classified as a disregarded entity, unless you elect otherwise. The term "disregarded" means the IRS treats the LLC as transparent for income tax purposes. Income and expenses flow directly to the owner's income tax return, if any.

If you're the sole owner of a US LLC, your LLC is likely a disregarded entity. This classification continues even if the LLC holds significant assets or conducts business activities.

Important distinction: While your LLC remains disregarded for income tax purposes, federal regulations now treat it as a separate corporation solely for international information reporting requirements under Internal Revenue Code Section 6038A. This informational reporting is separate from income tax reporting.

The 2017 Regulatory Change

On December 13, 2016, the Treasury Department issued final regulations under Internal Revenue Code Section 6038A. These regulations became effective for tax years beginning on or after January 1, 2017, and ending on or after December 13, 2017.



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The regulations impose new filing obligations on domestic disregarded entities wholly owned by foreign persons. For international information disclosure reporting purposes only, these LLCs must now be treated as domestic corporations under 6038A. They are otherwise disregarded for all other sections of the Internal Revenue Code.

How is a “foreign person” defined?

The term “foreign person” means any person who is not a United States person. This includes foreign individuals, foreign corporations, foreign partnerships, foreign trusts, and foreign estates. According to IRS guidance, a foreign person is anyone who is not a US citizen or resident, or any entity organized outside the United States.

Who Must File Form 5472?

You must file Form 5472 if all of these conditions apply:

You own 100% of a US LLC. The LLC must be a single-member entity. Multi-member LLCs taxed as partnerships have different rules.

You are a foreign person.

The LLC had reportable transactions with related parties. This includes transactions with you, the owner, as well as transactions with other entities you control. The related party can be U.S. or foreign. Reportable transactions include a broad range of activities between your LLC and related parties.

The filing requirement exists regardless of whether your LLC generates income, owes taxes, or conducts active business operations. For example, you own a vacation home for your family in an SMLLC. Generally, payment of an annual report fee to keep the LLC active would constitute a reportable transaction.

What Are Reportable Transactions?

Standard business transactions:

- Sales of goods or property
- Rental payments received or paid
- Royalties for intellectual property
- Interest on loans
- Service fees
- Commission payments
- Lease arrangements

Formation and ownership transactions:

- Capital contributions you make to the LLC
- Distributions the LLC makes to you
- Amounts connected to forming the LLC
- Payments related to dissolving the LLC
- Transfers of property into or out of the LLC

The IRS considers you, as the sole owner, a related party to your LLC. Money you put into the LLC or take out counts as a reportable transaction.

Example: You form a Florida LLC that holds rental property during the current year. During the year, you contributed \$350,000 to purchase the property, and the LLC paid you \$15,000 in rental profits. Both transactions must be reported on Form 5472.

Filing Requirements and Process

Foreign-owned U.S. disregarded entities must file Form 5472 attached to a pro forma Form 1120 (US Corporation Income Tax Return).

Pro forma Form 1120: This is a simplified version of the corporate tax return. You only need to complete basic identifying information including the LLC's name, address, and employer identification number. Write "Foreign-owned US DE" across the top. Most of the form remains blank.



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Form 5472 itself requires detailed information about:

- The LLC's ownership structure
- Related parties the LLC dealt with during the year
- Types and amounts of transactions with each related party
- Additional questions about the LLC's operations

If your LLC had transactions with multiple related parties, you must file a separate Form 5472 for each one.

Obtaining an Employer Identification Number (EIN)

Your LLC needs an Employer Identification Number before you can complete the required filings. Many foreign-owned LLCs that previously had no filing requirements never obtained this number.

Apply for an EIN through the IRS by completing Form SS-4. While the IRS website has an online tool to apply for US residents, foreign applicants typically need to apply by fax or mail, which takes longer.

It is recommended to start this process well before the filing deadline. Without an EIN, you cannot complete the filing.

Filing Deadlines

Form 5472 is due on the same schedule as corporate tax returns, not the deadline for the owner of the LLC which may be different.

For calendar year LLCs (which includes most single-member LLCs owned by individuals), the deadline is April 15 following the end of the tax year. You can request a six-month extension to October 15 by filing Form 7004.

For example, a SMLLC owned by a foreign individual would extend the disregarded entity filing by April 15 and the personal or foreign corporation income tax return, if any, by June 15 each year.

Critical point: The extension applies only to the filing deadline, not to any taxes owed. Since foreign-owned disregarded entities typically don't owe corporate taxes through this filing, the extension is primarily about avoiding penalties for late Form 5472 submission.

Record-Keeping Requirements

Beyond annual filing, you must maintain detailed records documenting all reportable transactions. Your records must be:

- Permanent and retained as long as they may be relevant
- Accurate and complete
- Sufficient to establish income, deductions, and credits
- Available for IRS examination upon request

Types of records to maintain:

- Bank statements showing contributions and distributions
- Invoices and receipts for transactions
- Contracts and agreements with related parties
- Documentation of property transfers
- Loan agreements and repayment schedules
- Records showing the calculation of rents, royalties, or other payments

Records must generally be kept for at least seven years. If you fail to maintain adequate records, you face the same penalties as failing to file Form 5472.

Common Scenarios

Scenario One - Rental Property LLC

A foreign individual owns a Florida SMLLC holding a single rental property. The SMLLC collects rent and pays expenses. The owner contributed initial capital and receives quarterly distributions.

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Filing requirement: The owner must file Form 5472 annually reporting contributions, distributions, and potentially other transactions depending on the structure and activity. This is in addition to filing an income tax return to report the rental activity, if the 30% flat tax on gross rentals is not being remitted to the government.

Scenario Two - Investment Property Held Vacant

A foreign corporation 100% owns a Delaware LLC formed in 2019. The LLC also purchased raw land in 2019 for future development. The property sits vacant.

Filing requirement: In 2019, the LLC should have filed Form 5472 reporting the initial contribution and any other related party transactions, even though no other activity occurred and no income was generated. Depending on the exact fact pattern for the subsequent years, there is a potential reporting requirement for any ongoing costs being paid (e.g. LLC annual report, real estate taxes)

Scenario Three - Multiple Related Entities

A UK resident owns a Florida LLC. The LLC rents property from another company the UK resident controls. The LLC also receives loans from the owner.

Filing requirement: The LLC must file two separate Forms 5472 - one for transactions with the owner and one for transactions with the related rental company.

Why These Rules Matter for Real Estate Owners

Foreign nationals commonly use single-member LLCs to hold US real estate.

Before 2017, if your LLC had no income or minimal income, you might not have filed any US returns. The property could appreciate for years with no annual reporting. Those days are over.

The existence of an LLC in many cases triggers an annual filing requirement, depending on the exact fact pattern.

The cost of non-compliance: Discovering you should have been filing Form 5472 for several years creates serious problems. Multiple years of unfiled forms mean potential penalties of \$25,000 per form per year. Catching up on five years of filings could theoretically expose you to a minimum of \$125,000 in penalties.

While the IRS has some discretion in penalty assessment and may reduce penalties in certain circumstances, you cannot rely on this. The statutory penalties are harsh by design.

Information Sharing

The Form 5472 include fields for the Foreign Taxpayer Identification Number of the LLC's owner. This suggests information reported on Form 5472 may be shared with your home country under international tax information exchange agreements.

The United States participates in the Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standard (CRS). These agreements facilitate automatic information exchange between tax authorities in different countries.

Filing accurate, complete information becomes even more important given this potential information sharing.

When to Seek Professional Help

Form 5472 compliance involves complex tax law and regulations. The consequences of errors or omissions are severe.

Working with a tax professional experienced in international tax matters makes sense for most foreign LLC owners. They can:

- Determine exactly which entities you own require filing
- Identify all reportable transactions
- Complete forms accurately
- Ensure proper record-keeping systems

- Represent you if IRS questions arise

The cost of professional assistance is minimal compared to potential penalties for non-compliance.

Key Takeaways

Federal regulations effective since 2017 impose annual reporting requirements on US single-member LLCs owned by foreign persons.

These LLCs with reportable transactions must file Form 5472 attached to a pro forma Form 1120 every year, regardless of income or activity level.

Penalties start at \$25,000 per form per year for failure to file or incomplete filing.

Proper record-keeping is mandatory and must support all reported transactions.

If you're a foreign national who owns a US SMLLC, review your filing obligations immediately. Years of unfiled forms create significant penalty exposure. Taking action now to achieve compliance protects you from much larger problems later.

Understanding and meeting these obligations keeps your US real estate investment or business structure in good standing. It also protects you from penalties that could cost tens of thousands of dollars or more.

Author's Notes:

This article is not intended to be tax advice.

It can be challenging to determine the filing requirements. Small changes in a fact pattern (e.g. use (or not) of a bank account in the name of the LLC and other factors) can change the required filings. Under regulations as written there is even potential for duplicate disclosures being required.

This information covers U.S. tax rules and regulations only. Your home country may have its own tax requirements for foreign property ownership. These may result in different tax treatment than U.S. rules apply to the ownership. Consult with a tax advisor in your country familiar with cross border activity before finalizing your ownership structure.

It is important to consult with tax professionals who regularly handle taxpayers with cross border issues or fact patterns that are more complex. The expertise of the professional is more important than where they are physically located. Professionals that have expertise in these matters can help ensure you understand your specific obligations and explore available options.

I am happy to advise you on analysis of your filing requirements, preparing and filing required forms, or consulting if you are out of compliance.

About the author:

David A Cumberland, CPA CGMA has presented at the local, state, and national level. David has authored articles intended for both the taxpayer and the tax professional. He is vice chair of the FICPA International tax committee and founder of Cumberland CPA & Co. which serves clients worldwide. He has published in the FICPA's Florida CPA Today magazine and produces client-based tax articles in English and Spanish to educate both current and prospective clients and advisors to those clients. He primarily practices in the area of inbound international tax work covering both individual and business tax preparation and consulting. Fluent in Spanish, his emphasis is working with international clients or clients with international considerations. David brings unique value and perspective to advising clients as a CPA as he has more than two decades of operational management experience in business in addition to a technical tax background. Having retired as lead shareholder of the International Tax Department of one of the largest independent certified public accounting firms in Southwest Florida his focus now is on continuing to serve clients he is passionate about in a boutique setting.

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