

## New Annual U.S. Tax Reporting Required for Foreign-Owned U.S. Limited Liability Companies and Other U.S. Business Entities

On December 13, 2016, the U.S. Treasury Department and Internal Revenue Service issued regulations requiring that foreign-owned U.S. limited liability companies (and other U.S. business entities) treated as disregarded entities for U.S. tax purposes file annually Form 5472 – Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business – with the U.S. Internal Revenue Service. Prior to this new regulation, disregarded U.S. entities wholly-owned by foreign persons generally were not required to file any U.S. tax or information returns.

Form 5472 will be used to collect a variety of information about the foreign-owned disregarded U.S. entity, including total assets of the entity, the direct and ultimate indirect 25-percent foreign owners of the entity and related party transactions.

In addition to Form 5472 reporting, foreign-owned disregarded U.S. entities are required under the regulations to comply with the record maintenance requirements of Internal Revenue Code 6038A pertaining to related party transactions.

The regulations are effective as of **December 13, 2016**. However, the Form 5472 portion of the regulations will apply to taxable years of foreign-owned disregarded U.S. entities beginning **after December 31, 2016**, and ending on or **after December 13, 2017**. Form 5472 will therefore be required starting with the 2017 taxable year. If a foreign-owned disregarded U.S. entity terminates before December 13, 2017, the U.S. entity would **not** need to file a 2017 Form 5472.

Under the regulations, the taxable year of a foreign-owned disregarded U.S. entity will be the taxable year of its foreign owner (if the foreign owner is required to file a U.S. tax return). If the foreign owner has no U.S. return filing obligation, the regulations provide that the taxable year of the foreign-owned disregarded U.S. entity will be the calendar year, unless otherwise provided in forms, instructions or published guidance.

Failure to timely file Form 5472 or maintain the records required by the regulations can result in substantial penalties against the U.S. entity, including a USD \$10,000 penalty against the U.S. entity for each violation. This penalty is imposed for **each** violation, and therefore penalties can quickly escalate if the U.S. entity has reportable transactions with more than one related party, each of which is required to be disclosed on a separate Form 5472.

In view of the new regulations, clients should consult with their advisors to determine the impact of the reporting requirements in order to comply or consider cancelling structures prior to **December 13, 2017**.

Please contact your local Trident Trust representative or our New York office if you would like to discuss the new regulations.

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