FORM 5471 – REPORTING OWNERSHIP IN FOREIGN CORPORATIONS

BY ELVIRA FRENCILLO, CPA

You may be required to file Form 5471, "Information Return of U.S. Persons with Respect to Certain Foreign Corporations," if you have ownership in a foreign corporation. Form 5471 is becoming increasingly important for U.S. taxpayers with interest in a foreign corporation regardless of location. Determining who needs to file Form 5471 can be a challenge in itself. The new changes made on the form and schedules, along with the 2020 new schedules R&Q, makes it more complex and cumbersome to prepare.

The Form 5471 instructions state that this form is an information return that is applicable to U.S. Citizens and U.S. Residents who are officers, directors, or shareholders in certain foreign corporations. The form and schedules are used to satisfy the reporting requirements of Section 6038 and 6046 of the Internal Revenue Code, as well as to report amounts related to Section 965 (U.S. shareholder requires to pay transition tax on the untaxed foreign earnings of certain specified foreign corporations as if those earnings had been repatriated to the United States).

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Form 5471 is a disclosure return. It is a detailed form that reports the activity of the foreign corporation. Among other information required, taxpayers must provide information involving the foreign corporate income, expense, and balance sheet for the company. The preparation of Form 5471, along with the schedules, needs to be done accurately. The IRS uses this informational return to determine who is subject to Subpart F Income or Global Intangible Low-Taxed Income (GILTI).

Subpart F Income is the income of a controlled foreign corporation (CFC) on any day during the tax year. A CFC is a foreign corporation in which U.S. persons own more than 50% of the corporation's stock. Subpart F income includes foreign base company income (FBCI); foreign source income from the sale of CFC stock in another CFC; hybrid dividends received by a CFC; certain insurance income; and other categories of "bad" foreign source income. Dividends, interest, rents, and royalties are certain types of corporate income that may be taxed and flow through to U.S. shareholders.

The new Global Intangible Low-Taxed Income (GILTI) provisions change how income from a CFC was historically taxed. It is an attempt to include in income, the earnings of the foreign corporation rather than when it is repatriated, as it was under prior law.

Any U.S. Persons (citizen or residents, partnership, corporation, and estate or trust) who owns at least 10% or more ownership interest of foreign corporation needs to file Form 5471. The information requested to complete the form and its various schedules depend on what type of category filer you are. There are five Categories of Filers listed by the IRS based upon ownership and control of the corporation.

Category 1 Filer refers to U.S. shareholders of a foreign corporation that falls under section 965 as a specified foreign corporation, which could either be a controlled foreign corporation or any foreign corporation with respect to which one or more domestic corporations is a U.S. shareholder.

Category 2 Filer refers to a U.S. citizen or resident who is an officer or director of a foreign corporation in which a U.S. person has acquired stock that meets the 10% stock ownership requirement or an additional percentage of stock.

Category 3 Filer refers to a U.S. person who acquires stock in a foreign corporation that meets the 10% stock ownership requirement. It can be a new acquisition of the 10% stock or newly acquired stock that is added to the old stock that puts him above 10%.

Category 4 Filer refers to a U.S. person who had control of a foreign corporation during the annual accounting period of the foreign corporation. Control typically means more than 50% of the total voting power or more than 50% of total classes of shares of stock.

Category 5 Filer refers to a U.S. shareholder who owns stock in a foreign corporation that is a CFC at any time during any tax year of the foreign corporation and who owned that stock on the last day of that year.

It should be noted that a separate Form 5471 and all applicable schedules for each applicable foreign corporation should be filed.

Form 5471 is an attachment to your income tax return (or, if applicable, partnership, corporation, or exempt organization return) and filed by the due date (including extensions) for that return.

A severe penalty is imposed for failure to comply with Form 5471 reporting. It can result in an immediate $10,000 penalty for failure to file; an additional $10,000 for each 30-day period the taxpayer fails to file within 90 days after receiving an IRS notice (up to a $50,000 maximum); a 10% reduction of the Foreign Tax Credit; and an open-ended statute of limitations period, not only for the Form 5471 but also for the income tax return to which it should have been attached.

If you have not submitted your Form 5471, you may be eligible to file under the IRS Streamlined Disclosure Program. Our professional tax experts are here to help you with your foreign asset reporting compliance.

About the Author

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Elvira Frencillo is a Tax Manager at KROST. She has 25 years of Accounting, Financial, and Taxation experience in both public and private industries. She has been in public accounting for over 11 years. Her areas of focus include tax planning, tax compliance, and financial reporting for individuals and their closely-held businesses, partnerships, corporations, and trusts.
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