



February 8, 2018

Office of Associate Chief Counsel (International)
Attention: Leni C. Perkins
Internal Revenue Service
IR-4549
1111 Constitution Avenue NW
Washington, DC 20224

Re: Request for Penalty Relief for First-Time Filers of Form 5471

Dear Ms. Perkins:

The American Institute of CPAs (AICPA) appreciates the filing obligation relief provided certain constructive owners of Controlled Foreign Corporations (CFC) provided by the Internal Revenue Service (IRS) in [Notice 2018-13](#). Elimination of the requirement for certain United States (U.S.) shareholders of a CFC to file an annual Form 5471, *Information Return of U.S. Persons with Respect to Certain Foreign Corporations*, was a welcome acknowledgement of the unnecessary burden otherwise imposed on many taxpayers by the repeal of section 958(b)(4)¹ in Pub. L. No. 115-97 (the “Act”). However, many other taxpayers will face a new requirement to file Form 5471 without realizing it. The AICPA urges the IRS to provide prospective penalty relief to such taxpayers.

As explained in Notice 2018-13, the repeal of section 958(b)(4) results in section 958(b) providing for “downward attribution” under section 318(a)(3) from a foreign person to a U.S. person in circumstances which were not provided for prior to enactment of the Act. This change does not affect the required amount to include in gross income of a U.S. shareholder, which does not consider such “downward attribution.”

Notice 2018-13 provides for a filing exception for a U.S. person that is considered a U.S. shareholder of a CFC solely as the result of the “downward attribution” created by the repeal of section 958(b)(4) provided that no U.S. shareholder owns stock directly or indirectly within the meaning of section 958(a) in such CFC. In many cases, an unrelated third party, who is a U.S. person, may own stock in such CFC causing this exception to not apply.

In the case that the exception is unavailable to a U.S. person that is considered a U.S. shareholder of a CFC solely as the result of this new “downward attribution,” taxpayers may fail to immediately realize that they are now required to file Form 5471 for tax year 2017 and all future years. Failure to timely file Form 5471 results in immediate imposition of a \$10,000 penalty by the IRS;

¹ All references to “section” or “§” are to the Internal Revenue Code of 1986, as amended, and all references to “Treas. Reg. §” and “regulations” are to U.S. Treasury regulations promulgated thereunder.

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taxpayers have historically faced difficulties in having this penalty abated, even when taxpayers believed they had reasonable cause.

The AICPA urges the IRS to immediately provide prospective penalty relief to any first-time filer of Form 5471 whose filing obligation results solely from the imposition of “downward attribution” created by the provisions of the Act.

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The AICPA is the world’s largest member association representing the accounting profession, with more than 418,000 members in 143 countries and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America’s largest businesses.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. Please feel free to contact me at (408) 924-3508 or Annette.Nellen@sjsu.edu; Philip Pasmanik, Chair, AICPA International Taxation Technical Resource Panel, at (212) 686-7160, ext. 156 or Philip.Pasmanik@hertzherson.com; or Jonathan Horn, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9204 or Jonathan.Horn@aicpa-cima.com.

Respectfully submitted,



Annette Nellen, CPA, CGMA, Esq.
Chair, AICPA Tax Executive Committee

cc: The Honorable David J. Kautter, Acting Commissioner, Internal Revenue Service
Mr. William Paul, Principal Deputy Chief Counsel and Deputy Chief Counsel (Technical),
Internal Revenue Service
Mr. Douglas O'Donnell, Large Business & International Commissioner, Internal Revenue
Service