

§ 1.6037-2 Required use of magnetic media for income tax returns of electing small business corporations.

The return of an electing small business corporation that is required to be filed on magnetic media under § 301.6037-2 of this chapter must be filed in accordance with Internal Revenue Service revenue procedures, publications, forms, or instructions, including those posted electronically. (See § 601.601(d)(2) of this chapter).

[T.D. 9363, 72 FR 63810, Nov. 13, 2007]

§ 1.6038-1 Information returns required of domestic corporations with respect to annual accounting periods of certain foreign corporations beginning before January 1, 1963.

(a) *Requirement of return.* For taxable years beginning after December 31, 1960, every domestic corporation shall make a separate annual information return on Form 2952, in duplicate, with respect to each foreign corporation which it controls, as defined in paragraph (b) of this section, and with respect to each foreign subsidiary, as defined in paragraph (c) of this section, for each annual accounting period (described in paragraph (d) of this section) of each such controlled foreign corporation or foreign subsidiary beginning after December 31, 1960, and before January 1, 1963. Such information shall not be required to be furnished, however, with respect to a corporation defined in section 1504(d) of the Code which makes a consolidated return for the taxable year. For annual accounting periods beginning after December 31, 1962, see § 1.6038-2.

(b) *Control.* A domestic corporation shall be deemed to be in control of a foreign corporation if at any time during its taxable year it owns more than 50 percent of the voting stock of such foreign corporation.

(c) *Foreign subsidiary.* A foreign corporation more than 50 percent of the voting stock of which is owned by a controlled foreign corporation at any time during the annual accounting period of such controlled foreign corporation shall be considered a foreign subsidiary.

(d) *Period covered by return*—(1) *Controlled foreign corporation.* The information with respect to a controlled foreign corporation shall be furnished for its annual accounting period ending with or within the domestic corporation's taxable year.

(2) *Foreign subsidiary.* The information with respect to a foreign subsidiary shall be furnished for such subsidiary's annual accounting period ending with or within the controlled foreign corporation's annual accounting period.

(3) *Annual accounting period defined.* For purposes of this section, the annual accounting period of a controlled foreign corporation or of a foreign subsidiary is the annual period on the basis of which the controlled foreign corporation or foreign subsidiary regularly computes its income in keeping its books. The term "annual accounting period" may refer to a period of less than 1 year, where for example the foreign income, war profits, and excess profits taxes are determined on the basis of an accounting period of less than 1 year as described in section 902(c)(2).

(e) *Contents of return.* The return on Form 2952 shall contain the following information with respect to each controlled corporation and each foreign subsidiary:

(1) The name and address of the corporation;

(2) The principal place of business of the corporation;

(3) The date of incorporation and the country under whose laws incorporated;

(4) The nature of the corporation's business;

(5) As regards the outstanding stock of the corporation:

(i) A description of each class of the corporation's stock, and

(ii) The number of shares of each class outstanding at the beginning and the end of the annual accounting period;

(6) A list showing the name and address of, and the number of shares of each class of the corporation's stock held by, each citizen or resident of the United States, and each domestic corporation, who is a shareholder of record owning at any time during the

annual accounting period 5 percent or more in value of any class of the corporation's outstanding stock;

(7) The amount of the corporation's gross receipts, net profits before taxes and provision for foreign income taxes, for the annual accounting period, as reflected on the financial statements required under paragraph (f) of this section to be filed with the return; and

(8) A summary showing the total amount of each of the following types of transactions of the corporation, which took place during the annual accounting period, with the domestic corporation or any shareholder of the domestic corporation owning at the time of the transaction 10 percent or more of the value of any class of stock outstanding of the domestic corporation:

(i) Sales and purchases of stock in trade;

(ii) Purchases of property of a character which is subject to the allowance for depreciation;

(iii) Compensation paid and compensation received for the rendition of technical, managerial, engineering, construction, scientific, or like services;

(iv) Commissions paid and commissions received;

(v) Rents and royalties paid and rents and royalties received;

(vi) Amounts loaned and amounts borrowed (other than open accounts which arise and are collected in the ordinary course of business);

(vii) Dividends paid and dividends received;

(viii) Interest paid and interest received; and

(ix) Premiums received for insurance or reinsurance.

If the domestic corporation is a bank, as defined in section 581, or is controlled within the meaning of section 368(c) by a bank, the term "transactions" shall not, as to a corporation with respect to which a return is filed, include banking transactions entered into on behalf of customers; in any event, however, deposits in accounts between a controlled foreign corporation or a foreign subsidiary and the domestic corporation or a 10-percent shareholder described in this subparagraph and withdrawals from such ac-

counts shall be summarized by reporting end-of-month balances.

(f) *Financial statements.* The following information with respect to each controlled foreign corporation and each foreign subsidiary shall be attached to and filed as part of the return required by this section:

(1) A statement of the corporation's profit and loss for the annual accounting period;

(2) A balance sheet as of the end of the annual accounting period of the corporation showing:

(i) The corporation's assets,

(ii) The corporation's liabilities, and

(iii) The corporation's net worth; and

(3) An analysis of changes in the corporation's surplus accounts during the annual accounting period including both opening and closing balances.

The statements listed in subparagraphs (1), (2), and (3) of this paragraph shall be prepared in conformity with generally accepted accounting principles, and in such form and detail as is customary for the corporation's accounting records.

(g) *Method of reporting.* All amounts furnished under paragraphs (e) and (f) of this section shall be expressed in United States currency with a statement of the exchange rates used.

(h) *Time and place for filing return.* Returns on Form 2952 required under paragraph (a) of this section shall be filed with the domestic corporation's income tax return on or before the fifteenth day of the third month following the close of such corporation's taxable year.

(i) *Extensions of time for filing.* District directors are authorized to grant reasonable extensions of time for filing returns on Form 2952 in accordance with the applicable provisions of §1.6081-1. An application by a domestic corporation for an extension of time for filing a return of income shall also be considered as an application for an extension of time for filing returns on Form 2952.

(j) *Failure to furnish information—(1) Effect on foreign tax credit.* (i) Failure by a domestic corporation to furnish, in accordance with the provisions of this section, any return or any information in any return, required to be filed for a taxable year under authority

of section 6038 on or before the date prescribed in paragraph (h) of this section (determined with regard to any extension of time for such filing) shall affect the application of section 902 as provided in subparagraph (2) of this paragraph. Such failure shall affect the application of section 902 to such domestic corporation or to any person who acquires from any person any portion (but only to the extent of such portion) of the interest of such domestic corporation in any controlled foreign corporation or foreign subsidiary.

(ii) Where the domestic corporation, having filed the return required by this section except for an omission of, or error with respect to, some of the information referred to in paragraphs (e) and (f) of this section, establishes to the satisfaction of the Commissioner that such omission or error was inadvertent or for reasonable cause and that such domestic corporation has substantially complied with this section, such omission or error shall not constitute a failure under this section.

(2) *Reduction of foreign taxes.* In the application of section 902 to the domestic corporation or person referred to in subparagraph (1)(i) of this paragraph for any taxable year, the amount of taxes paid or deemed paid by each controlled foreign corporation and each foreign subsidiary for the accounting period or periods for which the domestic corporation was required for the taxable year of the failure to furnish information under this section shall be reduced by 10 percent. The 10 percent reduction is not limited to the taxes paid or deemed paid by the controlled foreign corporation or foreign subsidiary with respect to which there is a failure to file information but shall apply to the taxes paid or deemed paid by all controlled foreign corporations and foreign subsidiaries.

(3) *Reduction for continued failure.* (i) If the failure, referred to in subparagraph (1)(i) of this paragraph, continues for 90 days or more after date of written notice by the district director to the domestic corporation, then the amount of the reduction referred to in subparagraph (2) of this paragraph shall be 10 percent plus an additional 5 percent for each 3-month period, or fraction thereof, during which such

failure continues after the expiration of such 90-day period.

(ii) Taxes paid by a foreign subsidiary when once reduced for a failure shall not be reduced again for the same failure in their status as taxes deemed paid by a controlled foreign corporation. Where a failure continues, each additional periodic 5 percent reduction, referred to in subdivision (i) of this subparagraph, shall be considered as part of the one reduction.

(4) *Reasonable cause.* (i) For purposes of subsection (b) of section 6038 and this section the time prescribed for furnishing information under this paragraph, and the beginning of the 90-day period after notice by the district director, shall be treated as being not earlier than the last day on which (as shown to the satisfaction of the district director) reasonable cause existed for failure to furnish such information.

(ii) A domestic corporation, which wishes to avoid a reduction in foreign tax credit as provided in subparagraphs (2) and (3) of this paragraph for failure to furnish information in accordance with this section, must make an affirmative showing of all facts alleged as a reasonable cause for such failure in the form of a written statement containing a declaration that it is made under the penalties of perjury.

(5) *Penalties.* The information required by section 6038 of the Code must be furnished even though there are no foreign taxes which would be reduced under the provisions of subparagraph (2) of this paragraph. For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207 of the Code.

[T.D. 6506, 25 FR 12241, Nov. 30, 1960, as amended by T.D. 6621, 27 FR 11878, Dec. 1, 1962]

§ 1.6038-2 Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations beginning after December 31, 1962.

(a) *Requirement of return.* Every U.S. person shall make a separate annual information return with respect to each annual accounting period (described in paragraph (e) of this section) beginning after December 31, 1962, of