

not apply to M with respect to M's failure to file Form 2952 in this example.

Example 2. The facts are the same as in example (1) except that all of the events occur in or with respect to the 1982 taxable year. On March 15, 1983, M filed its income tax return and paid its income tax, but M did not file Form 2952 or Form 5471 with respect to N's 1982 annual accounting period. On June 1, 1983, the district director mailed notice to M of M's failure to file Form 2952 or Form 5471 with respect to N. On November 30, 1983, M filed a complete Form 5471 with respect to N's 1982 annual accounting period. Under paragraph (k)(1)(i) of this section, M is subject to a penalty of \$1,000. Under paragraph (k)(1)(ii) of this section, that penalty is increased by \$4,000 because the failure continued for 92 days (three full 30-day periods and a fraction of a fourth 30-day period) after the end of the 90-day period following mailing of the notice by the district director, bringing M's dollar amount penalty under paragraph (k)(1) of this section to \$5,000. For purpose of determining the foreign tax credit available to M, there may be imposed a reduction of foreign tax paid by N of \$6,000, which would be the total of reductions under paragraph (k)(2) of this section with respect to M's failure to file under section 6038 for N's 1982 annual accounting period, before application of paragraph (k)(2)(vi) of this section. Under said paragraph (k)(2)(vi), the amount of the foreign tax reduction imposed is reduced by the amount of the dollar amount penalty, leaving a foreign tax reduction penalty of \$1,000 which may be imposed in addition to the \$5,000 dollar amount penalty. If imposed, the \$1,000 tax reduction would then be applied in the calculation of taxes deemed paid by M under section 902 as in example (1), items (c), (d), and (h).

Example 3. A, a U.S. person, owns 100 percent of the stock of FC. On April 15, 2008, A timely filed its 2007 income tax return but did not file Form 5471 with respect to FC's 2007 annual accounting period. On June 1, 2008, the Director of Field Operations mailed a notice to A of A's failure to file Form 5471 for 2007 with respect to FC. On August 1, 2008, A submits a written statement asserting facts for reasonable cause for failure to file the 2007 Form 5471 for FC. Based on A's statement and discussions with A, the Director of Field Operations agrees that A had reasonable cause for failure to file FC's 2007 Form 5471 and determined that it is reasonable for A to file FC's 2007 Form 5471 by September 15, 2008. The time prescribed for furnishing information under paragraph (i) of this section is September 15, 2008, and the 90-day period described under paragraphs (k)(1)(ii) and (k)(2)(iv)(A) of this section begins on that same date. Thus, if A files a completed Form 5471 by September 15, 2008, A is not subject to the penalties under paragraphs (k)(1) and (k)(2) of this section. If A

does not file a completed Form 5471 by December 14, 2008, in addition to the penalties under paragraphs (k)(1) and (k)(2) of this section, A will also be subject to the penalties for continued failure under paragraphs (k)(1)(ii) and (k)(2)(iv)(A) of this section.

Example 4. The facts are the same as in *Example 3* except A submits the written statement to the Director before a notice of failure to furnish information is mailed to A. The notice is mailed to A on September 7, 2008. Under these facts, the time prescribed for furnishing information under paragraph (i) of this section is September 15, 2008, and the 90-day period after mailing of notice of failure under paragraphs (k)(1)(ii) and (k)(2)(iv)(A) of this section begins on that same date.

(1) *Other persons excepted from filing.* For tax years of foreign corporations ending on or after December 29, 1999, any person required to furnish information under this section with respect to a foreign corporation does not have to furnish that information if the following conditions are met—

(1) Such person does not own a direct or indirect interest in the foreign corporation; and

(2) Such person is required to furnish information solely by reason of attribution of stock ownership from a non-resident alien(s) under paragraph (c) of this section.

(m) *Effective/applicability dates.* Except as otherwise provided, this section applies with respect to information for annual accounting periods beginning on or after June 21, 2006. Paragraphs (k)(1) and (k)(5) *Examples 3* and *4* of this section apply June 21, 2006.

[T.D. 8040, 50 FR 30163, July 24, 1985, as amended by T.D. 8573, 59 FR 64302, Dec. 14, 1994; T.D. 8733, 62 FR 53385, Oct. 14, 1997; T.D. 8850, 64 FR 72550, Dec. 28, 1999; T.D. 9194, 70 FR 18946, Apr. 11, 2005; T.D. 9268, 71 FR 35525, June 21, 2006; T.D. 9338, 72 FR 38475, July 13, 2007]

§ 1.6038-2T Information returns required of United States persons with respect to annual accounting periods of certain foreign corporations (temporary).

(a) through (c) [Reserved]. For further guidance, see § 1.6038-2(a) through (c).

(d) *U.S. person*—(1) *In general.* For purposes of section 6038 and this section, the term *United States person* has the meaning assigned to it by section

7701(a)(30), except as provided in paragraphs (d)(2) and (3) of this section.

(2) *Special rule for individuals residing in certain possessions.* With respect to individuals who are bona fide residents of Puerto Rico or any section 931 possession, as defined in §1.931-1T(c)(1), the term United States person has the meaning assigned to it by §1.957-3T.

(3) *Special rule for certain nonresident aliens.* An individual for whom an election under section 6013(g) or (h) is in effect shall, subject to the exceptions contained in paragraph (d)(2) of this section, be considered a United States person for purposes of section 6038 and this section.

(e) through (l) [Reserved] For further guidance, see §1.6038-2(e) through (l).

(m) *Effective/applicability date.* Paragraph (d) of this section shall apply for taxable years ending after October 22, 2004.

[T.D. 9194, 70 FR 18946, Apr. 11, 2005, as amended by T.D. 9268, 71 FR 35525, June 21, 2006; T.D. 9338, 72 FR 38476, July 13, 2007]

§ 1.6038-3 Information returns required of certain United States persons with respect to controlled foreign partnerships (CFPs).

(a) *Persons required to make return—(1) Controlling fifty-percent partners.* The term *controlling fifty-percent partner* means a United States person that controlled (as defined in paragraph (b)(1) of this section) the foreign partnership at any time during the partnership's tax year (as defined in paragraph (b)(8) of this section). Except as provided in paragraph (c), (d), or (e) of this section, for each tax year of a foreign partnership during which the partnership has one or more controlling fifty-percent partners, each controlling fifty-percent partner must complete and file Form 8865, "Return of U.S. Persons With Respect to Certain Foreign Partnerships," containing the information described in paragraph (g) of this section.

(2) *Controlling ten-percent partners.* If at any point during a foreign partnership's tax year (as defined in paragraph (b)(8) of this section) a United States person owned a ten-percent or greater interest in the partnership while the partnership was controlled by United States persons owning ten-percent or greater interests, such United States

person is a controlling ten-percent partner. See paragraph (b)(1) of this section for the definition of control. However, a United States person is not a controlling ten-percent partner with respect to a particular foreign partnership for a particular tax year of the foreign partnership if at any point during that year the partnership had a controlling fifty-percent partner, as defined in paragraph (a)(1) of this section. Except as provided in paragraph (c), (d), or (e) of this section, for each tax year of a partnership during which the partnership has controlling ten-percent partners, each controlling ten-percent partner must complete and file Form 8865 containing the information described in paragraph (g)(1) of this section.

(3) *Separate returns for each partnership.* A United States person required to report under this paragraph (a) must file a separate Form 8865 for each foreign partnership with respect to which the person is a controlling fifty-percent partner or a controlling ten-percent partner.

(b) *Ownership determinations and definitions—(1) Control.* Control of a foreign partnership is ownership of more than a fifty-percent interest in the partnership.

(2) *Fifty-percent interest.* A fifty-percent interest in a partnership is an interest equal to fifty percent of the capital interest in such partnership, an interest equal to fifty percent of the profits interest in such partnership, or an interest to which fifty percent of the deductions or losses of such partnership are allocated.

(3) *Ten-percent interest.* A ten-percent interest in a partnership is an interest equal to ten percent of the capital interest in such partnership, an interest equal to ten percent of the profits interest in such partnership, or an interest to which ten percent of the deductions or losses of such partnership are allocated.

(4) *Constructive ownership rules.* For purposes of determining an interest in a partnership, the constructive ownership rules of section 267(c) (other than section 267(c)(3)) apply, taking into account that such rules refer to corporations and not to partnerships. However, an interest will be attributed from a