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INTERNATIONAL ALERT

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Mandatory reporting by U.S. disregarded entities (single-member LLCs) owned by a non-U.S. person

Final Treasury regulations have been released governing the treatment of domestic disregarded entities wholly owned by a foreign person. The rules apply for the limited purposes of the reporting, record maintenance and associated compliance requirements that apply to 25 percent foreign-owned domestic corporations under Code Sec. 6038A.

The regulations are intended to help prevent the use of single-member LLCs to engage in illicit activities and to strengthen financial transparency. The regulations require foreign-owned "disregarded entities," including foreign-owned single-member LLCs, to obtain an employer identification number (EIN) from the IRS. The Treasury Department explained that there is a narrow class of foreign-owned U.S. entities—including single member LLCs—that under previous rules had no obligation to report information to the IRS or to get a tax identification number. According to the Treasury Department, these "disregarded entities" can be used to conceal the foreign owners of non-U.S. assets or non-U.S. bank accounts. The final regulations treat disregarded entities wholly owned by one foreign person as a domestic corporation separate from its owner solely for purposes of Section 6038A reporting. These otherwise disregarded entities are now subject to the reporting and record-keeping requirements that currently apply to 25 percent foreign-owned U.S. corporations. As a result, these entities must file Form 5472. The regulations do not affect the entity's classification for other purposes—for example, such entities are still disregarded for federal income tax computation purposes.

For more information please contact Mark Snider, Dixon Miller, or any member of Porter Wright's International Business & Trade Practice Group.