

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.602: Tax forms and instructions.
(Also: Part I, §§1503(d); 1.1503(d)-1)

Rev. Proc. 2020-30

SECTION 1. PURPOSE

As a result of travel restrictions and disruptions resulting from the global outbreak of the virus that causes COVID-19 (the “COVID-19 Emergency”), individuals may temporarily conduct activities in a country other than the United States or in a territory of the United States (any such country or territory, a “foreign country”) that would not otherwise have been conducted there. Absent guidance such as this revenue procedure, there may be uncertainty regarding whether these activities give rise to a foreign branch separate unit for purposes of the dual consolidated loss rules under section 1503(d) or an obligation to file Form 8858 (“Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs”).

This revenue procedure provides that certain activities are not taken into account for either of these purposes.

SECTION 2. BACKGROUND

.01 *Travel disruptions resulting from the COVID-19 Emergency.* Restrictions and other measures in response to, and disruptions resulting from, the COVID-19 Emergency may significantly restrict the cross-border movement of an individual, including an individual who intended to return to the United States from a foreign country. See generally Rev. Proc. 2020-20, section 2.01 (discussing restrictions and disruptions that may restrict the ability of an individual to leave the United States). These travel disruptions (collectively, “COVID-19 Emergency Travel Disruptions”) may include transportation disruptions, shelter-in-place orders, quarantines, border closures, and recommendations to implement social distancing and limit exposure to public spaces.

.02 *Dual consolidated loss rules.* In general, the dual consolidated loss rules under section 1503(d) limit the ability of a domestic corporation to use a “dual consolidated loss,” which is defined to include a net loss attributable to a “foreign branch separate unit.” See §§1.1503(d)-1(b)(4) and (5) and 1.1503(d)-4(b). A foreign branch separate unit generally means a business operation outside the United States that, if carried on by a U.S. person, would constitute a foreign branch as defined in §1.367(a)-6T(g)(1). See §1.1503(d)-1(b)(4)(i)(A).

.03 *Form 8858.* Form 8858 (“Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs)”) is used by certain

U.S. persons that directly or indirectly operate a foreign branch. Form 8858 and related schedules are used to satisfy the reporting requirements of sections 6011, 6012, 6031, and 6038, and related regulations. For purposes of Form 8858, a foreign branch means a foreign branch as defined in §1.367(a)-6T(g)(1), as well as a qualified business unit as defined in §1.989(a)-1(b)(2)(ii) (generally providing that activities qualify as a qualified business unit if the activities constitute a trade or business and a separate set of books and records is maintained with respect to the activities). See Instructions for Form 8858.

.04 Foreign branch definition. Section 1.367(a)-6T(g)(1) defines a foreign branch as activities that, based on all the facts and circumstances, constitute an integral business operation carried on by a U.S. person outside the United States. For this purpose, evidence of the existence of a foreign branch includes, but is not limited to, the existence of a separate set of books and records and the existence of an office or other fixed place of business used by employees or officers of the U.S. person in carrying out business activities outside the United States. Id. Further, activities outside the United States are deemed to constitute a foreign branch if the activities constitute a permanent establishment under the terms of a treaty between the United States and the foreign country in which the activities are carried out. Id. Whether a taxpayer has a permanent establishment in a foreign country is determined under the rules of the relevant U.S. income tax treaty.

SECTION 3. ACTIVITIES NOT TAKEN INTO ACCOUNT IN DETERMINING A FOREIGN BRANCH SEPARATE UNIT OR FORM 8858 FILING OBLIGATION

.01 *In general.* “Temporary activities,” as defined in section 3.02 of this revenue procedure, will not be taken into account for purposes of determining whether a domestic corporation has a foreign branch separate unit, or whether a U.S. person is required to file a Form 8858. As a result, temporary activities will not give rise to a foreign branch separate unit under section 1503(d). In addition, for purposes of Form 8858, temporary activities will not give rise to a foreign branch (that is, either a foreign branch as defined in §1.367(a)-6T(g)(1) or a qualified business unit as defined in §1.989(a)-1(b)(2)(ii)). Thus, temporary activities will not give rise to an obligation of a U.S. person to file a Form 8858, including an obligation to file a Form 8858 by attaching the Form 8858 to a Form 5471 with respect to a controlled foreign corporation or to a Form 8865 with respect to a controlled foreign partnership.

.02 *Temporary activities.* The term temporary activities means activities of a taxpayer conducted by one or more individuals in a foreign country during any single consecutive period of up to 60 calendar days selected by the taxpayer within calendar year 2020, to the extent that the individual or individuals were temporarily present in the foreign country during the period and the activities would not have been conducted in the foreign country but for COVID-19 Emergency Travel Disruptions with respect to the individual or individuals. For example, if an individual employed by or acting on behalf of a domestic corporation traveled to a foreign country on March 1, 2020, and as a result of restrictions implemented by, or recommendations of, the U.S. government or a foreign government in response to the COVID-19 Emergency remained in the foreign country until April 27, 2020, then any activities conducted by the individual on behalf of

the domestic corporation during such period would constitute temporary activities, to the extent that, but for the restrictions or recommendations, the individual would have left, and would not have conducted the activities in, the foreign country.

.03 Documentation. A domestic corporation that for purposes of section 1503(d), or a U.S. person that for purposes of Form 8858, treats activities as temporary activities should retain contemporaneous documentation to establish that the activities are temporary activities (including to establish the up-to-60-day period described in section 3.02 of this revenue procedure during which the activities occur), and should be prepared to provide the documentation to the Internal Revenue Service upon request.

.04 No inference. No inference should be drawn from this revenue procedure as to whether activities of a taxpayer that are conducted by one or more individuals in a foreign country during calendar year 2020 and that would be temporary activities without regard to the 60-day limit described in section 3.02 of this revenue procedure give rise to a foreign branch as defined in §1.367(a)-6T(g)(1) or a qualified business unit as defined in §1.989(a)-1(b)(2)(ii).

SECTION 4. DRAFTING INFORMATION

The principal author of this revenue procedure is Shane McCarrick of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact Mr. McCarrick at (202) 317-6937 (not a toll-free call).