



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

October 15, 2001

UIL: 6038.01-00

CC:INTL:BR02 [REDACTED]

COR-126804-01

Number: **INFO 2001-0276**

Release Date: 12/31/2001

[REDACTED]

Dear [REDACTED]:

This letter is in response to your correspondence received by our office on May 15, 2001, requesting an informational letter clarifying whether your client is required to file Forms 5471 and TD F 90-22.1. Form TD F 90-22.1 is not within the jurisdiction of the Internal Revenue Service but within the jurisdiction of the Financial Crimes Enforcement Network Division of the Department of the Treasury. With respect to Form 5471, your request does not include the necessary information or user fee required to issue a ruling. However, after a review of your letter, we are providing the following general information.

Form 5471 (Information Return of U.S. Persons With Respect To Certain Foreign Corporations) is required to be filed by certain United States persons, who are officers, directors or 10% shareholders in certain foreign corporations. Form 5471 instructions. For these purposes, the term United States person includes a citizen or resident of the United States. Form 5471 instructions.

Section 7701(b) of the Code defines resident and nonresident alien for purposes of Title 26 other than subtitle B. The statutory authority for the filing of the Form 5471 is sections 6035 and 6038, which are under subtitle F, chapter 61A, part IIIA. See also, sections 951(b) and 957(c), under subtitle A, chapter 1N, part IIIF, which defines a United States shareholder of a CFC to include a U.S. citizen or resident. Section 7701(b)(1)(A)(ii) provides that an alien individual shall be treated as a resident of the United States with respect to any calendar year if such individual meets the substantial presence test of section 7701(b)(3).

From your submission, your client, having met the substantial presence test for 1998, 1999, and 2000, will be considered a resident of the United States and a U.S. shareholder of a CFC for purposes of Form 5471. Your client is required to file Form 5471 for the years in question because your client is a United States resident who owns 100 percent of a foreign corporation and thus is a U.S. shareholder of a CFC. Moreover, your client is a category four and category five

filer for Form 5471 purposes and fails to qualify for any of the several filing exceptions listed in the instructions to the form. Further, there are no exceptions, statutory or otherwise, that would eliminate the annual filing requirement for a U.S. shareholder of a CFC based upon the character or the amount of the CFC's income.

Should your client continue to meet the substantial presence test for 2001, or any other future tax year, your client will continue to be considered a resident of the United States and will be required to file the annual informational form in question.

This is a general information letter and not a ruling or determination. If you desire further guidance from the Internal Revenue Service with respect to the filing of Form 5471 in the form of a letter ruling, you will need to comply with the requirements set forth in Rev. Proc. 2001-1, 2001-1 I.R.B. 1 (January 2, 2001). Generally, your ruling request must include the following:

1. A complete statement of facts and other information
2. A statement of supporting authorities
3. A statement about whether the issue is under audit
4. A statement identifying information to be deleted from a copy of the letter ruling for public inspection
5. Penalties of perjury statement
6. User fee (see section 15 and Appendix A of Rev. Proc. 2001-1 for the fee schedule)

As previously stated, the Department of Treasury has jurisdiction over the filing of Form TD F 90-22.1. Any questions regarding the filing of TD F 90-22.1 should be directed to the Financial Crimes Enforcement Network Office of Regulatory Compliance, Attn: Franklin Court Building, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182.

If you have any further questions, please contact Jonathan A. Sambur at (202)622-3840.

Sincerely,

Phyllis E. Marcus
Branch Chief, Branch 2
Office of the Associate Chief Counsel
(International)