



Form 5471 FAQs

What is Form 5471?

[Form 5471](#), *Information Return of US Persons with Respect to Certain Foreign Corporations*, is an informational return required to be filed annually with the US income tax return for US citizens (including US corporations) and resident aliens who are officers, directors, or shareholders in certain foreign corporations. It is notorious for being one of the most difficult US tax forms to prepare. Recent efforts by Congress to require US taxpayers to repatriate their foreign earnings under the Tax Cuts and Jobs Acts of 2017 (“TCJA”) has further complicated Form 5471 preparation.

Do I Have to File Form 5471 Annually?

It depends. US persons who meet specific criteria must file [Form 5471](#) by attaching it to an individual income tax return, a partnership return, a corporation return, an estate return, or a trust return. A shareholder’s filing category(ies) will determine Form 5471 filing requirements, frequency, and timing.

What are the Filing Requirements for Form 5471 ?

The IRS identifies [five different categories](#) of US persons who are required to file Form 5471 with their taxes each year. By their definition, a “US person” includes US citizens, partnerships, trusts, estates, and corporations. The five categories of filers are as follows:

1. A US shareholder of a foreign corporation that is a section 965 specified foreign corporation (“SFC”) at any time during any tax year of the foreign corporation, and who owned that stock on the last day in that year on which it was an SFC. *Note: there are three subcategories: 1a, 1b, and 1c;*
2. A US citizen or resident who is an officer or director of the foreign corporation in which a US person has acquired 10% or more of the foreign corporation’s stock;
3. A US person who acquires or disposes of stock in the foreign corporation meeting certain thresholds (10% or more);
4. A US person who had “control” of foreign corporation during the annual accounting period of the foreign corporation; and
5. A US shareholder who owns stock in a foreign corporation that is a controlled foreign corporation (“CFC”) at any time during any tax year of the foreign corporation, and who owned that stock on the last day in that year on which it was a CFC. *Note: there are three subcategories: 5a, 5b, & 5c.*

Note: The instructions to Form 5471 provide additional detailed information regarding the requirements for each filing category and can be found [here](#).

If a US person falls into more than one filing category, Form 5471 must be completed per the instructions for all items that apply. If a US person owns multiple foreign corporations, that US person must complete a separate Form 5471 for each entity.

What is Constructive Ownership?

When a US person does not own shares of a foreign corporation directly, they still may be characterized as a shareholder of the entity via “constructive ownership” from a related person or entity. Certain exceptions apply.

What is a Controlled Foreign Corporation?

A CFC is a foreign corporation in which one or more US shareholders collectively own more than 50% of that entity’s stock. The IRS defines a foreign corporation as being U.S. controlled if:

Foreign corporations that are CFCs are generally subject to the anti-deferral rules under subpart F, IRC § 965, and GILTI.

What Information May be Required?

To substantially complete a Form 5471, the US filer must disclose a variety of information about the foreign entity. This includes (but is not limited to):

- Classes of stock;
- Direct and indirect US and foreign shareholders of the entity;
- Income statement and balance sheet;
- Taxes paid or accrued;
- Current and accumulated earnings and profits, broken down by type of income;
- Summary of shareholder’s income from foreign corporation (derived from subpart F, § 965, GILTI, actual dividends paid, etc.);
- Related-party transactions; etc.

Form 5471 Deadline

A Form 5471 is filed as an attachment to a US person’s individual/corporate/partnership/estate tax return. It must be filed by the due date (including extensions) for that return. The filing requirements are very complicated, and the penalties are high, so it is essential that you seek professional advice from a qualified service provider such as American Expat Tax Services to ensure that your tax return is considered “substantially complete.”

What Happens If I Don’t File Form 5471 on Time?

The penalties for failure to file a Form 5471 are high. In addition to penalties associated with failing to file an individual/corporate/partnership/estate tax return, the IRS reserves the right to assess an automatic additional penalty of \$10,000 for failing to file Form 5471. This \$10,000 penalty applies to each Form 5471 and each year that the Form is late/not filed or deemed to be substantially incomplete. Additional penalties of up to \$50,000 can apply for instances of continued failure to file. Any person who fails to file or report all of the information required within the time prescribed will be subject to a

reduction of 10% of the foreign taxes available for credit. Also, continued cases of failure are also subject to additional deductions. More information on penalties can be found [here](#).

The IRS is actively working on securing more information on US citizens' finances overseas through FACTA and other methods. They have recently entered into agreements with numerous foreign countries to exchange information regarding foreign activities, and noncompliance is now more likely than ever to be discovered.

If you find yourself in the position of having delinquent Forms 5471, there are various amnesty programs available to possibly assist you with safely getting into compliance.

What is the Big Picture Here?

In conclusion, Form 5471 is an important international information reporting Form. Form 5471 (and all of its associated Schedules and disclosures) is a complex, time-intensive, and laborious undertaking.

If you believe you might be subject to Form 5471 filing requirements, set up an appointment with American Expat Tax Services and speak with one of our Form 5471 experts about ways to bring you into compliance.

Legal Disclaimer

Information only / No Legal or Tax Advice Intended

This document is designed to provide general information regarding the subject matter covered. It is not intended to serve as legal, tax, or other financial advice related to individual situations.

Because each individual's legal, tax, and financial situation is different, specific advice should be tailored to the particular circumstances. For this reason, you are advised to consult with your own attorney, CPA, and/or another advisor regarding your specific situation.