

The Form 5471 Series, Episode 1

Overview: Who is a Form 5471 Filer?

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The Form 5471 Series: 2023 - 2024

Date	Episode	Title
Part 1. The Filer		
April 28, 2023	1	Overview: Who is a Form 5471 Filer?
May 26, 2023	2	The Attribution Rules for Form 5471
June 30, 2023	3	The Nine Categories of Form 5471 Filers
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February 23, 2024	10	The Section 962 Election
March 29, 2024	11	Tax Performance Comparison: CFCs vs. Other Structure Types

Form versions, cutoff date

- Form versions used in this episode:
 - Form 5471 (Rev. December 2022).
 - Instructions for Form 5471 (Rev. January 2023).
- The information in these slides is current as of April 28, 2023.

The objective

- These eleven episodes will give you a foundation to understand Form 5471's underpinnings for some of the major topics of interest. I can't cover everything in 11 hours. (How long does it take to understand earnings and profits, for instance?)
- Pareto Principle: the series covers the 20% that will give you the 80% payoff.
- Today: the 20% of what really matters so you can figure out if someone has a Form 5471 filing requirement — with the gaps filled in over the next three sessions.

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1. Introduction

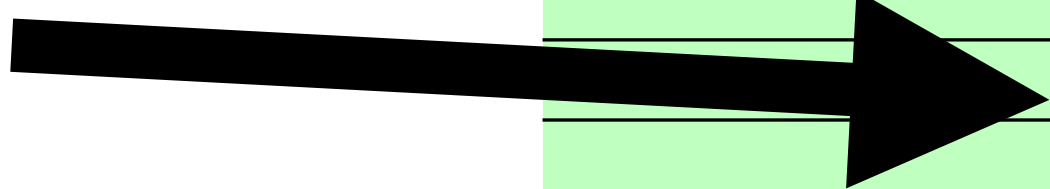
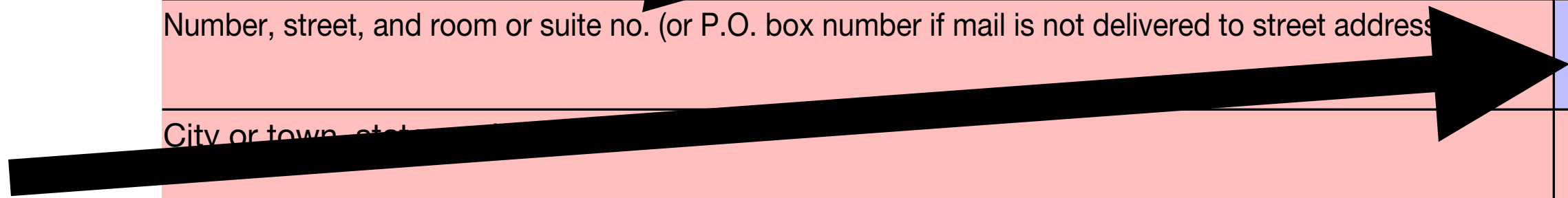
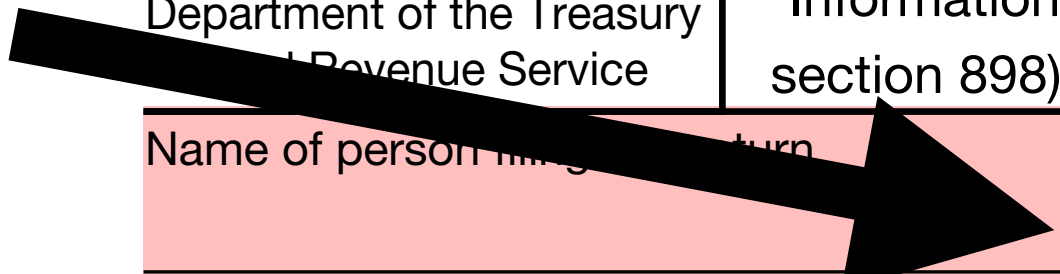
Episode 1 is a high-level introduction to Episodes 2, 3, and 4

Episode 2: "Who is a Filer?"

Episode 3: "The Nine Categories"

Episode 4: "Filing Exceptions"

<p>Form 5471 (Rev. December 2022)</p> <p>Department of the Treasury Internal Revenue Service</p>	<p>Information Return of U.S. Persons With Respect to Certain Foreign Corporations</p> <p>Go to www.irs.gov/Form5471 for instructions and the latest information.</p> <p>Information furnished for the foreign corporation's annual accounting period (tax year required by section 898) (see instructions) beginning _____, 20____, and ending _____, 20____</p>	<p>OMB No. 1545-0123</p> <hr/> <p>Attachment Sequence No. 121</p>	
Name of person filing this return		A Identifying number	
Number, street, and room or suite no. (or P.O. box number if mail is not delivered to street address)		B Category of filer (See instructions. Check applicable box(es).): 1a <input type="checkbox"/> 1b <input type="checkbox"/> 1c <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input type="checkbox"/> 5a <input type="checkbox"/> 5b <input type="checkbox"/> 5c <input type="checkbox"/>	
City or town, state		C Enter the total percentage of the foreign corporation's voting stock you owned at the end of its annual accounting period _____ %	
Filer's tax year beginning _____, 20____, and ending _____, 20____			
D Check box if this is a final Form 5471 for the foreign corporation <input type="checkbox"/>			
E Check if any excepted specified foreign financial assets are reported on this form (see instructions) <input type="checkbox"/>			
F Check the box if this Form 5471 has been completed using "Alternative Information" under Rev. Proc. 2019-40 <input type="checkbox"/>			
G If the box on line F is checked, enter the corresponding code for "Alternative Information" (see instructions)			
H Person(s) on whose behalf this information return is filed:			
(1) Name	(2) Address	(3) Identifying number	(4) Check applicable box(es)
			Shareholder Officer Director



2. Who is a Form 5471 Filer?

This is a preview of Episode 2.

2.1. Introduction to “Who Is a Form 5471 Filer?”

You only have a Form 5471 problem if two things are true. There are other things that must also be true, but if one of these two things is missing, you do not have a Form 5471 filing requirement.

Two things you need to have a Form 5471 filing requirement


1. United States person who is a shareholder **and** owns (or owned) “enough” shares.

2. A foreign corporation.

Two things you need to have a Form 5471 filing requirement

1. United States person who is a shareholder **and** owns (or owned) “enough” shares.
 - United States person
 - Owns (or owned)
 - And **enough** shares (at a specific date or “after a specific event or transaction”)
2. A foreign corporation.
 - Foreign
 - Corporation

Two things you need to have a Form 5471 filing requirement

1. United States person who is a shareholder **and** owns (or owned) “enough” shares.
 - United States person
 - Owns (or owned)  **The Pareto Principle lives here**
 - And **enough** shares (at a specific date or “after a specific event or transaction”)
2. A foreign corporation.
 - Foreign
 - Corporation

2.2. First Essential Element: Foreign Corporation

“Foreign” defined

- “Foreign” entities are entities that are not “domestic.” IRC §7701(a)(5).
- “Domestic” entities are those formed in the 50 States or the District of Columbia. IRC §7701(a)(4), (9).

“Corporation” defined

- **Per se corporations.** Some types of foreign entities are automatically and always classified as a corporation for U.S. tax purposes. This classification cannot be changed by a check-the-box election. Reg. §301.7701-2(b)(8) contains the list. You can also find the list in *Instructions for Form 8832*.
- **Foreign eligible entities.** Some types of foreign entities are associations classified as corporations for U.S. tax purposes by Reg. §301.7701-3. Their default classification depends on the limited liability of their owners. If all owners have limited liability, the entity is taxable as a corporation. Reg. §301.7701-3(b)(2)(i). These entities can change their U.S. tax classification by a check-the-box election (use Form 8832).

Checklist: Is this a foreign corporation?

1. **Foreign.** Do the organizing documents name the organizing jurisdiction as one of the 50 States or the District of Columbia? If “no,” you have a foreign entity.
2. **Corporation.**
 - Is the entity type on the list of **per se corporations** found in the *Instructions for Form 8832*? If yes, it is a corporation. If no, go to the next step.
 - Is the entity type a **foreign eligible entity** with limited liability for all owners? If yes, it is classified as a corporation. If no, then you do not have an entity classified as a corporation for U.S. tax purposes.
3. **Check-the-Box Election.** Did someone secretly make an election behind your back?

2.3. Second Essential Element: A U.S. Person Owns (or Owned) “Enough” Stock at the “Right” Time

Stock ownership requirements exist in every filing category

Type of Potential Form 5471 Filer	The Stock Ownership Trigger	Category
U.S. persons who are officers or directors	File Form 5471 when any U.S. person acquires “enough” foreign corporation stock to hit defined threshold levels of stock ownership	2
U.S. persons who are (or were) shareholders	File Form 5471 when you acquire “enough” foreign corporation stock to hit defined threshold percentages of stock ownership	3
	File Form 5471 if you owned “enough” stock and became a resident alien in the tax year	3
	File Form 5471 when you dispose of “enough” foreign corporation stock to hit a defined threshold percentage of stock ownership	3
	File Form 5471 when you own enough stock to “control” a foreign corporation	4
	File Form 5471 when you own 10% or more of a section 965 specified foreign corporation’s stock	1
	File Form 5471 when you own 10% or more of a controlled foreign corporation’s stock	5

2.3(A). The Right Kind of Taxpayer: a “United States Person”

United States Person

- Defined at IRC §957(c) by cross-reference to the default definition of “United States person” from IRC §7701(a)(30), PLUS
- Modification for bona fide residents of Puerto Rico, and
- Modification for corporations organized in Guam, American Samoa, or the Northern Mariana Islands, and
- Modification for individuals who are bona fide residents of Guam, American Samoa, or the Northern Mariana Islands.

2.3(B). At the “Right” Time

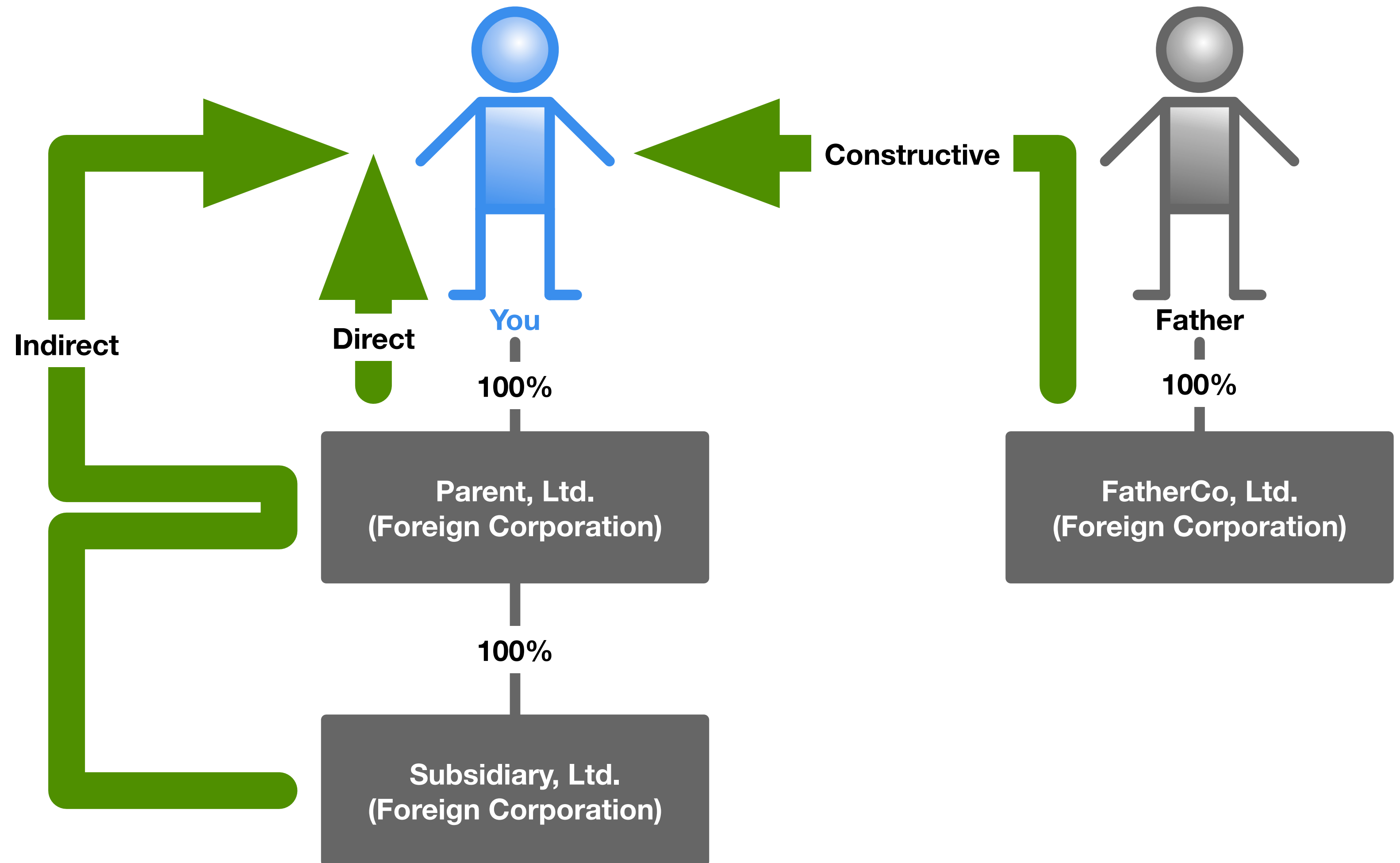
The right moment in time

- There are different requirements for *when* the required stock ownership amount must be true. Two that you will see a lot:
 - “At any time in the taxable year”
 - “On the last day of the foreign corporation’s year or the last day the foreign corporation is a controlled foreign corporation”
- This will be discussed in future episodes. The *Instructions to Form 5471* will tell you the right moment in time at which you need to determine stock ownership for each category.

2.3(C). The Meaning of “Own”

Use the words with care: Direct, indirect, and constructive

- You have **constructive** ownership of 100% of FatherCo, Ltd.'s stock.
- You have **indirect** ownership of 100% of Subsidiary, Ltd.'s stock.
- You have **direct** ownership of 100% of Parent, Ltd.'s stock.



Direct, indirect, and constructive stock ownership

Attribute (Verb)	The word that describes the “let’s pretend you own the stock” idea. The Code attributes ownership to you. You have constructive ownership of shares of stock owned by family members, or indirect ownership of subsidiary stock because you own the parent company.
Direct (Adjective)	Your name is on the stock certificate for a foreign corporation’s stock.
Indirect (Adjective)	You have an ownership interest in an entity, and the entity is a direct owner of stock of a foreign corporation. The attribution rules say you are an indirect owner of stock of the foreign corporation. (Note: multitiered holding structures are common).
Constructive (Adjective)	A human (or entity in which you do not have direct or indirect ownership) is the direct or indirect owner of stock of a foreign corporation. The attribution rules make you a constructive owner of that stock. See, for example, IRC §958(b). But sometimes “constructive” includes “indirect”, e.g., IRC §318.

Your percentage ownership — vote or value

- Your ownership of stock is computed in one of two ways:
 - By your percentage of the voting power of all issued and outstanding stock of all classes, or
 - By your percentage of value of all issued and outstanding stock of all classes.
- Sometimes just one of these is used to determine whether you own a threshold amount of stock, but most of the times it's an either/or test, and satisfying one of these will be sufficient to trigger the Form 5471 filing requirement.

The hard part of the hard part

- The hard part of figuring out “are you a filer?” is computing your stock ownership in the foreign corporation.
- The hard part of the hard part (figuring out stock ownership) is understanding and applying the attribution rules to determine indirect and constructive ownership.

Five filing categories, three sets of attribution rules

Category	Filing Requirement Created By	Attribution Rules	Modifications to the Attribution Rules
2, 3	IRC §6046(a)	IRC §6046(c)	Reg. §1.6046-1(i)
4	IRC §6038(a)	IRC §318(a)	IRC §6038(e), Reg. §1.6038-2(c)
1, 5	IRC §6038(a)(4)	IRC §318(a)	IRC §§958(a), (b), Reg. §§1.958-1, 1.958-2

2.4. Summary: “Who is a Form 5471 Filer?”

Summary of “Who is a filer?”

- **Easy Part:** identifying the existence of a foreign corporation, identifying an officer or director (for Category 2 purposes only). There are other easy parts.
- **Hard Part:** identifying all of the shareholders and how much stock they own.
- **Hard Part of the Hard Part:** applying the attribution rules to identify indirect and constructive ownership of the foreign corporation’s stock.
- **Why the Hard Part of the Hard Part is Hard:** there are three different attribution rule sets used to determine indirect and constructive stock ownership for Form 5471 purposes. They are so similar that they lull you into complacency.

3. The Nine Filing Categories

This is an preview of Episode 3.

3.1. Introduction to the Nine Filing Categories

Form 5471, Item B

Form **5471**

(Rev. December 2022)

Department of the Treasury
Internal Revenue Service

Information Return of U.S. Persons With Respect to Certain Foreign Corporations

Go to www.irs.gov/Form5471 for instructions and the latest information.

Information furnished for the foreign corporation's annual accounting period (tax year required by section 898) (see instructions) beginning _____, 20____, and ending _____, 20____

OMB No. 1545-0123

Attachment
Sequence No. **121**

Name of person filing this return

A Identifying number

Number, street, and room or suite no. (or P.O. box number if mail is not delivered to street address)

B Category of filer (See instructions. Check applicable box(es).):

1a 1b 1c 2 3 4 5a 5b 5c

Why it matters:

What You Are → What You File

Table of Required Information

Required Information*	Category of Filer								
	1a	1b	1c	2	3	4	5a	5b	5c
The identifying information on page 1 of Form 5471 above Schedule A; see Specific Instructions	✓	✓	✓	✓	✓	✓	✓	✓	✓
Schedule A					✓	✓			
Schedule B, Part I					✓	✓			
Schedule B, Part II	✓		✓		✓	✓	✓		✓
Schedules C and F					✓	✓			
Separate Schedule E	✓	✓ ₁	✓ ₂			✓	✓	✓ ₁	✓ ₂
Schedule E-1 (included with separate Schedule E)	✓	✓ ₁				✓	✓	✓ ₁	
Schedule G			✓		✓	✓	✓		✓
Separate Schedule G-1			✓		✓	✓	✓		✓
Separate Schedule H						✓	✓		
Schedule I						✓	✓	✓	
Separate Schedule I-1						✓	✓	✓	✓
Separate Schedule J	✓					✓	✓		
Separate Schedule M						✓			
Separate Schedule O, Part I				✓					
Separate Schedule O, Part II					✓				
Separate Schedule P	✓	✓				✓	✓	✓	
Separate Schedule Q						✓	✓	✓	
Separate Schedule R						✓	✓		
*See also Additional Filing Requirements .									
1. Schedules E and E-1 are required for an unrelated section 958(a) U.S. shareholder only if the filer claims deemed paid foreign income taxes of the foreign-controlled section 965 SFC or foreign-controlled CFC under section 960 for the filer's tax year. See Rev. Proc. 2019-40 for more details.									
2. Related constructive U.S. shareholders only need to complete Schedule E (they can leave Schedule E-1 blank). See Rev. Proc. 2019-40 for more details.									

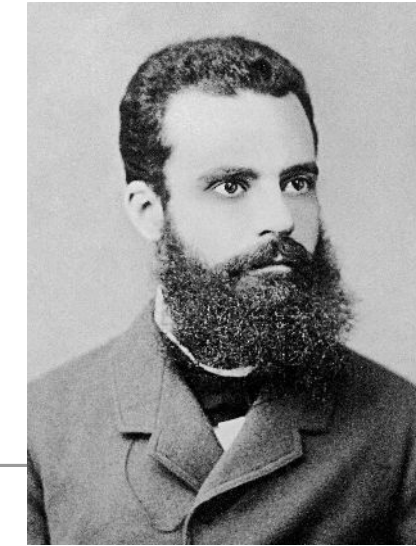
What you need to know to answer Item B

- Is the potential filer a “**United States person**”? (All categories: either the category explicitly refers to United States persons, or it is implicit, embedded in another defined term). Is this the **first year of United States person status** for an individual (Category 3)?
- Is the entity a “**section 965 specified foreign corporation**” (Categories 1a - 1c), a “**foreign corporation**” (Categories 1 - 4), or a “**controlled foreign corporation**” (Categories 1a - 1c, 5a - 5c)?
- Is this person a “**United States shareholder**” (Categories 1a - 1c, 5a - 5c) or “**officer or director**” (Category 2)?
- Is there a stock **acquisition** (Category 2 and 3) or **disposition** (Category 3)?
- A **bunch of fiddly (but critical) definitions** for Categories 1b, 1c, 5b, 5c.

Category	(Defined Term) A “who” . . .	(My Description) Owns . . .	(Defined Term) . . . of “What”?
1a	United States shareholder	10% or more of the stock	Section 965 specified foreign corporation
1b	Unrelated §958(a) United States shareholder	10% or more of the stock and some of that stock is owned directly or indirectly	Foreign-controlled section 965 specified foreign corporation
1c	Related constructive United States shareholder	10% or more of the stock and all of the stock is owned constructively, not directly or indirectly	Foreign-controlled section 965 specified foreign corporation
2	United States person who is an officer or director	Reports that a United States person acquired “enough” stock	Foreign corporation
3	United States person	Acquires or disposes of “enough” stock	Foreign corporation
4	United States person	“Controls” (means owns more than 50% of stock)	Foreign corporation
5a	United States shareholder	10% or more of the stock	Controlled foreign corporation
5b	Unrelated §958(a) United States shareholder	10% or more of the stock and some of that stock is owned directly or indirectly	Foreign-controlled controlled foreign corporation
5c	Related constructive United States shareholder	10% or more of the stock and all of the stock is owned constructively, not directly or indirectly	Foreign-controlled controlled foreign corporation

How it's done

Vilfredo Pareto smiles.



1. All stock ownership is identified to the maximum extent of the attribution rules.
2. If a stock disposition/acquisition happened this year, look at **Categories 2 and 3**. Then look for exceptions for the filing requirement.
3. If a Section 965 problem exists, look at **Category 1**. If Category 1 applies, determine the correct subcategory. Then look for exceptions to the filing requirement.
4. Determine “control” for **Category 4**. Then look for exceptions to the filing requirement.
5. Determine whether **Category 5** applies. If Category 5 applies, determine the correct subcategory. Then look for exceptions to the filing requirement.

3.2. Do Categories 2 or 3 Apply to this Person?

Step 1: Did a stock transaction occur this year?

- Form 5471, Part I, Schedules A and B reflect some information, and your work papers are exhaustively complete and accurate for everything not reported in Part I.
- Did a stock issuance, reorganization, redemption, etc. change a U.S. person's stock ownership percentage in the taxable year?
- If issued and outstanding stock remained unchanged all year:
 - Did an acquisition of enough stock by a U.S. person occur this year?
 - Did a disposition of enough stock by a U.S. person occur this year?
 - Did someone become a U.S. resident or terminate U.S. resident status this year?

“Enough” — acquisitions (Categories 2, 3)

- Acquisitions
 - the acquisition that puts you at 10% or more stock ownership for the first time.
 - the acquisition that puts you at your originally triggering stock ownership percentage plus 10%.
 - E.g., your first acquisition was 12% of the stock of the foreign corporation. When you reach 22% stock ownership, you have acquired “enough” additional stock to qualify for Category 2, 3 reporting purposes.

“Enough” — dispositions (Category 3)

- The transaction that pushes a shareholder below the 10% ownership level is the transaction that triggers a Category 3 filing requirement.
- First figure out if the disposition occurred amongst all shareholders.
- Then you figure out if the disposition matters to your client because of the attribution rules.

Reorganizations, redemptions, etc. (Category 3)

- Corporate reorganizations, mergers, stock redemptions, etc. can all affect the remaining shareholder's percentage of ownership.
- The percentage of ownership may be decreased because the reorganization is dilutive for the shareholders. Or maybe a new shareholder is admitted, diluting the stock ownership percentages of current shareholders. Will this be a “disposition” of “enough” stock to trigger a Category 3 filing requirement?
- Category 3 filing requirements apply to a 10% or more shareholder when a reorganization occurs. Reg. §1.6046-1(c)(1)(ii)(b). The impact of reorganizations for Category 2 purposes is unclear.

Weird “acquisitions”

- Look for ownership of “enough” stock (10% or more) when a nonresident alien becomes a resident alien.
- Owning “enough” stock of a foreign corporation when you become a U.S. resident alien is a weird kind of “acquisition,” if you want to look at it like that.
- A U.S. citizen marrying a nonresident alien who owns “enough” stock is also a weird kind of “acquisition” of stock triggering Category 3 filing obligations.

Step 2: Is this taxpayer an officer or director?

- If a transaction occurred and this United States person is an officer or director, then Category 2 applies. (The shareholder is always Category 3).
- Ask your taxpayer if he/she is an officer or director.
- Make a qualitative decision as to whether your taxpayer's title rises to the level of "officer or director" for Category 2 purposes.
- Hint: there is no guidance. Is an Assistant Associate Vice-Undersecretary an "officer?" Probably not but there are no definitions in the Code or Regulations.

Step 3. Do exceptions to Category 2, Category 3 filing exist?

- First, determine whether Category 2 or Category 3 will apply.
- Second, determine whether an exception exists to remove the filing requirement.
- See the *Instructions for Form 5471* for well-organized and well-explained summaries of the applicable exceptions.
- Exceptions are discussed at length in Episode 4 of The Form 5471 Series.

Category 2, 3 summary table

Type of Transaction	Type of Taxpayer	Filing Category Applied
Acquisition of “enough” stock by any U.S. person	Officer/Director	2
Acquisition of “enough” stock by a U.S. person officer/director	Officer/Director and Shareholder	2, 3
Acquisition of “enough” stock by a U.S. person	Shareholder	3
Weird “acquisition” events by a U.S. person (direct or attributed)	Shareholder	3
Disposition of “enough” stock by U.S. person (direct or attributed)	Shareholder	3
Reorganizations, redemptions, etc. affecting a remaining shareholder	Officer/Director and Shareholder	2 (unclear), 3

3.3. Does Category 1 Apply to this Person?

Triage sequence to determine Category 1 filing requirements

1. **Shortcut.** If no IRC §965 earnings and profits exist in Schedules J and P, halt: an exception eliminates Category 1 filing requirements. If you see IRC §965 earnings and profits, go to Step 2. See *Instructions for Form 5471* (rev. January 2023), pages 2-3.
2. **Shareholder.** Do you own enough stock to be a **United States shareholder**? If yes, go to Step 3. If no, halt: you do not have a Category 1 problem.
3. **Corporation.** Is this a **section 965 specified foreign corporation**? If yes, go to Step 4. If no, halt: you do not have a Category 1 problem.
4. **Category.** Determine whether you are Category **1a, 1b, or 1c**.
5. **Exceptions.** Determine whether one of several exceptions applies to excuse you from filing Form 5471 as a Category 1a, 1b, or 1c filer.

Section 965 specified foreign corporation

- Defined at IRC §965(e) as either:
 - A controlled foreign corporation; or
 - A foreign corporation with a U.S. corporation as a shareholder.
- Be careful using the defined term “specified foreign corporation.” It has one meaning here, for IRC §965. It has another meaning for purposes of determining the taxable year of the foreign corporation, at IRC §898. The same “specified foreign corporation” term is used in both places, though in IRC §965, its Regs., and the administrative pronouncements there is some effort to say “section 965 specified foreign corporation”, for clarity.

3.4. Does Category 4 Apply to this Person?

Triage sequence to determine Category 4 filing requirements

1. Look at IRC §6038(e)(2). Does the taxpayer “own” more than 50% of the stock of a foreign corporation? Look at your stock ownership analysis work papers.
2. Multiple people can have “control” of a foreign corporation because of the attribution rules.
3. Does your taxpayer have “control” of the foreign corporation? If yes, then Category 4 applies. Go to Step 4. If no, halt: you do not have a Category 4 problem.
4. Look for filing exceptions that might apply to remove your obligation to file Form 5471 as a Category 4 taxpayer.

3.5. Does Category 5 Apply to this Person?

Triage sequence to determine Category 5 filing requirements

1. **Shareholder.** Determine whether your taxpayer is a “United States shareholder” in the foreign corporation “as defined by IRC §958(a) or (b)” on the right day. If yes, proceed to Step 2. If no, halt: you do not have a Category 5 problem.
2. **Corporation.** Determine whether your foreign corporation is a “controlled foreign corporation” as defined by IRC §957(c). If yes, you have a Category 5 problem. Proceed to Step 3. If no, halt: you do not have a Category 5 problem.
3. **Category.** Determine whether you fit into Category 5a, 5b, or 5c.
4. **Exception.** Determine whether filing exceptions apply to relieve you of a Category 5 filing requirement for Form 5471.

4. Filing Exceptions

This is a preview of Episode 4.

You have a Form 5471 filing obligation. How can you do less work?

- **Eliminate Filing.** An explicit exception entirely eliminates your obligation to file Form 5471.
- **Joint Filing.** Someone else files Form 5471, and includes you at Item H. Your filing obligation is satisfied by their work. Someone else is driving the motorcycle and you're in the sidecar.
- **Lite™ Filing.** You still have to file Form 5471, but some information requirements are waived.
- Here in Episode 1 I will highlight the exceptions that eliminate filing obligations; joint and lite™ filing rules are addressed in Episode 4.

4.1. Category 1: Exceptions to Filing

4.1(A). Category 1 Exception: No More IRC §965 Earnings and Profits

Exception: no more IRC §965 earnings and profits

“When Category 1 reporting is no longer required. A Category 1 filer must continue to file all information required as long as:

- The section 965 SFC (or foreign-controlled section 965 SFC) has accumulated E&P related to section 965 that is reportable on Schedule J (Form 5471); or
- The Category 1 filer has previously taxed E&P related to section 965 that is reportable on Schedule P (Form 5471).”
- *See Instructions for Form 5471, pages 2-3.*

4.1(B). Category 1 Exceptions: Constructive Ownership

Filing obligation solely due to attribution from a United States Person

- You do not have direct stock ownership in the foreign corporation.
- You only have a Form 5471 filing requirement because of attribution of stock ownership from a United States person by Reg. §§1.958-2, §1.6038-2(c), or §1.6046-1(i).
- The United States person files Form 5471 and includes all of the information that *you* are supposed to provide—and of course all of the information that the United States person is supposed to provide.
- See *Instructions for Form 5471*, page 3. Exception is from Reg. §1.6038-2(j)(2)(i).

Constructive ownership from a nonresident alien

- You do not have a direct or indirect interest in the foreign corporation.
- Your constructive ownership of foreign corporation stock is from a nonresident alien.
- See *Instructions for Form 5471*, page 3. The exception is from Reg. §1.6038-2(l).

No U.S. shareholders under IRC §958(a) (Notice 2018-13, § 5.02)

- **Shareholders.** The foreign corporation has no IRC §958(a) United States shareholder at all (i.e., not just you).
- **Corporation.** It's a foreign-controlled section 965 specified foreign corporation.
 - “Specified foreign corporation” is defined at IRC §965(e) and Reg. §1.965-1(f)(45).
 - The concept of “foreign-controlled” is from Rev. Proc. 2019-40, §2.03.
 - They add “section 965” into the definition because “specified foreign corporation” is also used in IRC §898 for another purpose entirely.

Constructive ownership, unrelated (Rev. Proc. 2019-40, § 8.04)

- **Corporation.** It's a foreign-controlled section 965 specified foreign corporation.
- **Shareholder.** You are an “unrelated constructive United States shareholder”.
- **Constructive.** You do not own stock within the meaning of IRC §958(a)—you have no direct stock ownership and no indirect stock ownership through foreign entities. You have constructive stock ownership only, within the meaning of IRC §958(b).
- **Unrelated.** You are not “related” to the foreign-controlled section 965 specified foreign corporation. “Related” is defined in IRC §954(d)(3).
- *Instructions for Form 5471, page 3.*

4.2. Category 2: Exceptions to Filing

After an acquisition, 3 or fewer U.S. shareholders own $\geq 95\%$

- U.S. person who is an officer or director of a foreign corporation does not need to file Form 5471 as a Category 2 filer if:
 - A U.S. person files as a Category 3 filer with respect to the acquisition; and
 - After the acquisition, 3 or fewer U.S. persons own 95% or more of the stock of the foreign corporation.
- Reg. §1.6046-1(e)(4)(ii).

Category 3 shareholder exception eliminates Category 2 filing

- Reg. §1.6046-1(e)(iv) makes an exception for Category 2 filing as follows:
 - A U.S. person does not have a direct stock ownership in a foreign corporation,
 - And has a Category 3 filing requirement solely because of stock ownership attribution from another U.S. person of Reg. §1.6046-1(l).
 - If the U.S. person from whom attribution of stock occurred files properly as a Category 3 filer, then
 - There is no Category 2 reporting for the acquisition of stock that occurred solely because of the attribution rules.

4.3. Category 3: Exceptions to Filing

Constructive ownership; the direct/indirect owner files Category 3

- Reg. §1.6046-1(e)(4)(iii)
- You do not have direct stock ownership.
- You are a constructive stock owner because of Reg. §1.958-2, Reg. §1.6038-2(c), or Reg. §1.6046-1(i), attributed from a United States person.
- That United States person (who had a stock transaction that triggered your constructive ownership) reports the transaction as a Category 3 filer.

4.4. Category 4: Exceptions to Filing

No direct ownership and the real controlling shareholder files

- You don't have direct ownership in the foreign corporation.
- You have constructive ownership because of Reg. §§1.958-2, 1.6038-2(c), or 1.6046-1(i) attribution from a U.S. person.
- The U.S. person reports everything that would be required of you, the would-be Category 4 filer.
- Reg. §1.6038-2(j)(2)(i).

Constructive ownership from a nonresident alien

- No direct or indirect interest in the foreign corporation.
- You only have “control” of the foreign corporation because of attribution of stock ownership from a nonresident alien caused by the rules in Reg. §1.6038-2(c).
- Reg. §1.6038-2(l).

4.5. Category 5: Exceptions to Filing

No direct ownership and the real controlling shareholder files

- You don't have direct ownership in the foreign corporation
- You have constructive ownership because of Reg. §§1.958-2, 1.6038-2(c), or 1.6046-1(i) attribution from a U.S. person.
- The U.S. person reports everything that would be required of you, the would-be Category 5 filer.
- Reg. §1.6038-2(j)(2)(i).

No direct, indirect ownership; Attribution from nonresident alien

- You do not have a direct or indirect stock ownership interest in the foreign corporation.
- You only have a Category 5 problem because of attribution of stock ownership from a nonresident alien under the principles of Reg. §1.6038-2(c).
- Reg. §1.6038-2(l).

No direct, indirect United States shareholders

- No United States shareholders exist with direct or indirect ownership as defined in IRC §958(a) (including you).
- The foreign corporation is a foreign-controlled controlled foreign corporation.
- The concept of a foreign-controlled controlled foreign corporation is from Rev. Proc. 2019-40, §2.03.
- Notice 2018-13, § 5.02.

Constructive owner only, not “related” to the foreign corporation

- **Corporation.** The foreign corporation is a foreign-controlled controlled foreign corporation.
- **Shareholder.**
 - You do not have direct or indirect stock ownership within the meaning of IRC §958(a). (Thus, you must be a constructive owner of stock in order to be subjected to a Category 5 filing requirement).
 - You are not “related” to the foreign-controlled controlled foreign corporation, as “related” is defined in IRC §954(d)(3).
- Rev Proc 2019-40, § 8.04.

4.6. Category 5: Summary of Filing Exceptions

Filing exceptions — summary

- There are other filing exceptions; you will see them in the Instructions for Form 5471. We are disciples of Vilfredo Pareto here. We aren't talking about foreign sales corporations, treaty claims, etc.
- Note how the exceptions turn on what type of stock ownership you have: direct, indirect, or constructive. This underscores my point about the stock ownership analysis as the single most important thing you will do when a Form 5471 project lands on your desk.
- Episode 4 will go into greater depth, and show how you can file a joint Form 5471 with someone else (if you trust them to do things right and file on time!).

5. Conclusion

Conclusion

- Thank you for being here. Quick overviews in Episode 1 will, I hope, mean that the general topics are familiar to you when we go deep in Episodes 2, 3, and 4.
- The most valuable work you will do is thoroughly document the stock ownership of the foreign corporation: who owns the shares of stock, and how the attribution rules make us pretend that someone else owns those shares.
- See you next month in Episode 2 for a deep dive on the esoteric meaning of “own” — and especially the three different sets of attribution rules.

Follow-up? Questions? Comments?

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