

1984—Pub. L. 98-369 designated existing provisions as subsec. (a) and added subsec. (a) heading and subsec. (b).

1982—Pub. L. 97-354 substituted “S corporation” for “electing small business corporation” in section catchline, substituted “Every S corporation” for “Every electing small business corporation (as defined in section 1371(b))”, and substituted “each shareholder’s pro rata share of each item of the corporation for the taxable year, and such other information” for “and such other information”.

1976—Pub. L. 94-455 substituted “section 1371(b)” for “section 1371(a)(2)” and struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1317(a) of Pub. L. 104-188, set out as a note under section 641 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 714(q)(5) of Pub. L. 98-369, set out as an Effective Date note under section 6034A of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE

Section applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 64(e) of Pub. L. 85-866, set out as an Effective Date of 1958 Amendment note under section 172 of this title.

§ 6038. Information reporting with respect to certain foreign corporations and partnerships

(a) Requirement

(1) In general

Every United States person shall furnish, with respect to any foreign business entity which such person controls, such information as the Secretary may prescribe relating to—

(A) the name, the principal place of business, and the nature of business of such entity, and the country under whose laws such entity is incorporated (or organized in the case of a partnership);

(B) in the case of a foreign corporation, its post-1986 undistributed earnings (as defined in section 902(c));

(C) a balance sheet for such entity listing assets, liabilities, and capital;

(D) transactions between such entity and—

- (i) such person,
- (ii) any corporation or partnership which such person controls, and
- (iii) any United States person owning, at the time the transaction takes place—

(I) in the case of a foreign corporation, 10 percent or more of the value of any class of stock outstanding of such corporation, and

(II) in the case of a foreign partnership, at least a 10-percent interest in such partnership; and

(E)(i) in the case of a foreign corporation, a description of the various classes of stock outstanding, and a list showing the name

and address of, and number of shares held by, each United States person who is a shareholder of record owning at any time during the annual accounting period 5 percent or more in value of any class of stock outstanding of such foreign corporation, and

(ii) information comparable to the information described in clause (i) in the case of a foreign partnership.

The Secretary may also require the furnishing of any other information which is similar or related in nature to that specified in the preceding sentence or which the Secretary determines to be appropriate to carry out the provisions of this title.

(2) Period for which information is to be furnished, etc.

The information required under paragraph (1) shall be furnished for the annual accounting period of the foreign business entity ending with or within the United States person’s taxable year. The information so required shall be furnished at such time and in such manner as the Secretary shall prescribe.

(3) Limitation

No information shall be required to be furnished under this subsection with respect to any foreign business entity for any annual accounting period unless the Secretary has prescribed the furnishing of such information on or before the first day of such annual accounting period.

(4) Information required from certain shareholders in certain cases

If any foreign corporation is treated as a controlled foreign corporation for any purpose under subpart F of part III of subchapter N of chapter 1, the Secretary may require any United States person treated as a United States shareholder of such corporation for any purpose under subpart F to furnish the information required under paragraph (1).

(5) Information required from 10-percent partner of controlled foreign partnership

In the case of a foreign partnership which is controlled by United States persons holding at least 10-percent interests (but not by any one United States person), the Secretary may require each United States person who holds a 10-percent interest in such partnership to furnish information relating to such partnership, including information relating to such partner’s ownership interests in the partnership and allocations to such partner of partnership items.

(b) Dollar penalty for failure to furnish information

(1) In general

If any person fails to furnish, within the time prescribed under paragraph (2) of subsection (a), any information with respect to any foreign business entity required under paragraph (1) of subsection (a), such person shall pay a penalty of \$10,000 for each annual accounting period with respect to which such failure exists.

(2) Increase in penalty where failure continues after notification

If any failure described in paragraph (1) continues for more than 90 days after the day on which the Secretary mails notice of such failure to the United States person, such person shall pay a penalty (in addition to the amount required under paragraph (1)) of \$10,000 for each 30-day period (or fraction thereof) during which such failure continues with respect to any annual accounting period after the expiration of such 90-day period. The increase in any penalty under this paragraph shall not exceed \$50,000.

(c) Penalty of reducing foreign tax credit**(1) In general**

If a United States person fails to furnish, within the time prescribed under paragraph (2) of subsection (a), any information with respect to any foreign business entity required under paragraph (1) of subsection (a), then—

(A) in applying section 901 (relating to taxes of foreign countries and possessions of the United States) to such United States person for the taxable year, the amount of taxes (other than taxes reduced under subparagraph (B)) paid or deemed paid (other than those deemed paid under section 904(c)) to any foreign country or possession of the United States for the taxable year shall be reduced by 10 percent, and

(B) in the case of a foreign business entity which is a foreign corporation, in applying sections 902 (relating to foreign tax credit for corporate stockholder in foreign corporation) and 960 (relating to special rules for foreign tax credit) to any such United States person which is a corporation (or to any person who acquires from any other person any portion of the interest of such other person in any such foreign corporation, but only to the extent of such portion) for any taxable year, the amount of taxes paid or deemed paid by each foreign corporation with respect to which such person is required to furnish information during the annual accounting period or periods with respect to which such information is required under paragraph (2) of subsection (a) shall be reduced by 10 percent.

If such failure continues 90 days or more after notice of such failure by the Secretary to the United States person, then the amount of the reduction under this paragraph shall be 10 percent plus an additional 5 percent for each 3-month period, or fraction thereof, during which such failure to furnish information continues after the expiration of such 90-day period.

(2) Limitation

The amount of the reduction under paragraph (1) for each failure to furnish information with respect to a foreign business entity required under subsection (a)(1) shall not exceed whichever of the following amounts is the greater:

- (A) \$10,000, or
- (B) the income of the foreign business entity for its annual accounting period with respect to which the failure occurs.

(3) Coordination with subsection (b)

The amount of the reduction which (but for this paragraph) would be made under paragraph (1) with respect to any annual accounting period shall be reduced by the amount of the penalty imposed by subsection (b) with respect to such period.

(4) Special rules

(A) No taxes shall be reduced under this subsection more than once for the same failure.

(B) For purposes of this subsection and subsection (b), the time prescribed under paragraph (2) of subsection (a) to furnish information (and the beginning of the 90-day period after notice by the Secretary) shall be treated as being not earlier than the last day on which (as shown to the satisfaction of the Secretary) reasonable cause existed for failure to furnish such information.

(C) In applying subsections (a) and (b) of section 902, and in applying subsection (a) of section 960, the reduction provided by this subsection shall not apply for purposes of determining the amount of post-1986 undistributed earnings.

(d) Two or more persons required to furnish information with respect to same foreign corporation

Where, but for this subsection, two or more United States persons would be required to furnish information under subsection (a) with respect to the same foreign business entity for the same period, the Secretary may by regulations provide that such information shall be required only from one person. To the extent practicable, the determination of which person shall furnish the information shall be made on the basis of actual ownership of stock.

(e) Definitions

For purposes of this section—

(1) Foreign business entity

The term “foreign business entity” means a foreign corporation and a foreign partnership.

(2) Control of corporation

A person is in control of a corporation if such person owns stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or more than 50 percent of the total value of shares of all classes of stock, of a corporation. If a person is in control (within the meaning of the preceding sentence) of a corporation which in turn owns more than 50 percent of the total combined voting power of all classes of stock entitled to vote of another corporation, or owns more than 50 percent of the total value of the shares of all classes of stock of another corporation, then such person shall be treated as in control of such other corporation. For purposes of this paragraph, the rules prescribed by section 318(a) for determining ownership of stock shall apply; except that—

(A) subparagraphs (A), (B), and (C) of section 318(a)(3) shall not be applied so as to consider a United States person as owning stock which is owned by a person who is not a United States person, and

(B) in applying subparagraph (C) of section 318(a)(2), the phrase “10 percent” shall be substituted for the phrase “50 percent” used in subparagraph (C).

(3) Partnership-related definitions

(A) Control

A person is in control of a partnership if such person owns directly or indirectly more than a 50 percent interest in such partnership.

(B) 50-percent interest

For purposes of subparagraph (A), a 50-percent interest in a partnership is—

(i) an interest equal to 50 percent of the capital interest, or 50 percent of the profits interest, in such partnership, or

(ii) to the extent provided in regulations, an interest to which 50 percent of the deductions or losses of such partnership are allocated.

For purposes of the preceding sentence, rules similar to the rules of section 267(c) (other than paragraph (3)) shall apply.

(C) 10-percent interest

A 10-percent interest in a partnership is an interest which would be described in subparagraph (B) if “10 percent” were substituted for “50 percent” each place it appears.

(4) Annual accounting period

The annual accounting period of a foreign business entity is the annual period on the basis of which such foreign business entity regularly computes its income in keeping its books. In the case of a specified foreign business entity (as defined in section 898), the taxable year of such foreign business entity shall be treated as its annual accounting period.

(f) Cross references

(1) For provisions relating to penalties for violations of this section, see section 7203.

(2) For definition of the term “United States person”, see section 7701(a)(30).

(Added Pub. L. 86-780, §6(a), Sept. 14, 1960, 74 Stat. 1014; amended Pub. L. 87-834, §20(a), Oct. 16, 1962, 76 Stat. 1059; Pub. L. 88-554, §4(b)(6), Aug. 31, 1964, 78 Stat. 764; Pub. L. 94-455, title X, §1031(b)(5), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1623, 1834; Pub. L. 97-248, title III, §338(a)-(c), Sept. 3, 1982, 96 Stat. 631; Pub. L. 99-514, title XII, §§1202(c), 1245(b)(5), Oct. 22, 1986, 100 Stat. 2530, 2581; Pub. L. 101-239, title VII, §7712(a), Dec. 19, 1989, 103 Stat. 2393; Pub. L. 101-508, title XI, §11701(f), Nov. 5, 1990, 104 Stat. 1388-508; Pub. L. 104-188, title I, §1704(f)(5)(A), (t)(40), (46), Aug. 20, 1996, 110 Stat. 1880, 1889; Pub. L. 105-34, title XI, §1142(a)-(e)(2), Aug. 5, 1997, 111 Stat. 981-983; Pub. L. 105-206, title VI, §6011(f), July 22, 1998, 112 Stat. 818.)

PRIOR PROVISIONS

A prior section 6038 was renumbered section 6040 of this title.

AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105-206, §6011(f)(1), struck out “by regulations” before “prescribe”.

Subsec. (a)(3). Pub. L. 105-206, §6011(f)(2), substituted “the Secretary has prescribed the furnishing of such information on or before the first day of such annual accounting period.” for “such information was required to be furnished under regulations in effect on the first day of such annual accounting period.”

Subsec. (e)(4). Pub. L. 105-206, §6011(f)(3), substituted “such foreign business entity” for “such corporation” in two places.

1997—Pub. L. 105-34, §1142(a), inserted “reporting” after “Information” and “and partnerships” after “corporations” in section catchline.

Subsec. (a). Pub. L. 105-34, §1142(a), reenacted heading without change.

Subsec. (a)(1). Pub. L. 105-34, §1142(a), reenacted heading without change and amended text generally. Prior to amendment, par. (1) consisted of subpars. (A) to (E) relating to general requirements of information with respect to foreign corporations.

Subsec. (a)(2), (3). Pub. L. 105-34, §1142(e)(1)(A), substituted “foreign business entity” for “foreign corporation” in pars. (2) and (3).

Subsec. (a)(5). Pub. L. 105-34, §1142(d), added par. (5).

Subsec. (b). Pub. L. 105-34, §1142(c), (e)(1)(B), substituted “foreign business entity” for “foreign corporation” in par. (1), substituted “\$10,000” for “\$1,000” in pars. (1) and (2), and substituted “\$50,000” for “\$24,000” in par. (2).

Subsec. (c)(1). Pub. L. 105-34, §1142(e)(1)(C), (2), substituted “foreign business entity” for “foreign corporation” in introductory provisions and inserted “in the case of a foreign business entity which is a foreign corporation,” after “(B)” in subpar. (B).

Subsec. (c)(2). Pub. L. 105-34, §1142(e)(1)(C), substituted “foreign business entity” for “foreign corporation” in introductory provisions and in subpar. (B).

Subsec. (d). Pub. L. 105-34, §1142(e)(1)(D), substituted “foreign business entity” for “foreign corporation”.

Subsec. (e). Pub. L. 105-34, §1142(b), added pars. (1) and (3), redesignated former pars. (1) and (2) as (2) and (4), respectively, inserted “of corporation” after “Control” in par. (2) heading, and substituted “foreign business entity” for “foreign corporation” in two places in par. (4).

1996—Subsec. (a)(1)(E), (F). Pub. L. 104-188, §1704(f)(5)(A), substituted period for “, and” at end of subpar. (E) and struck out subpar. (F) which read as follows: “such information as the Secretary may require for purposes of carrying out the provisions of section 453C.”

Subsec. (e). Pub. L. 104-188, §1704(t)(40), redesignated subsec. (e), relating to cross references, as (f).

Subsec. (e)(2). Pub. L. 104-188, §1704(t)(46), made technical amendment to directory language of Pub. L. 101-508. See 1990 Amendment note below.

Subsec. (f). Pub. L. 104-188, §1704(t)(40), redesignated subsec. (e), relating to cross references, as (f).

1990—Subsec. (e)(2). Pub. L. 101-508, as amended by Pub. L. 104-188, §1704(t)(46), in subsec. (e) relating to definitions, inserted at end of par. (2) “In the case of a specified foreign corporation (as defined in section 898), the taxable year of such corporation shall be treated as its annual accounting period.”

1989—Subsec. (a)(1). Pub. L. 101-239, §7712(a)(2), inserted before period at end “or which the Secretary determines to be appropriate to carry out the provisions of this title.”

Subsec. (a)(4). Pub. L. 101-239, §7712(a)(1), added par. (4).

1986—Subsec. (a)(1)(B). Pub. L. 99-514, §1202(c)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “the accumulated profits (as defined in section 902(c)) of such foreign corporation, including the items of income (whether or not included in gross income under chapter 1), deductions (whether or not allowed in computing taxable income under chapter 1), and any other items taken into account in computing such accumulated profits;”.

Subsec. (a)(1)(F). Pub. L. 99-514, §1245(b)(5), added subpar. (F).

Subsec. (c)(4)(C). Pub. L. 99-514, §1202(c)(2), substituted “post-1986 undistributed earnings” for “accumulated profits in excess of income, war profits, and excess profits taxes”.

1982—Subsec. (a)(1). Pub. L. 97-248, §338(c)(2), substituted “subsection (e)(1)” for “subsection (d)(1)”.

Subsec. (b). Pub. L. 97-248, §338(a), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 97-248, §338(a), (b), (c)(1), (3), redesignated former subsec. (b) as (c), substituted “Penalty of reducing foreign tax credit” for “Effect of failure to furnish information” in heading, inserted “of such failure” after “90 days or more after notice” in par. (1), added par. (3), redesignated former par. (3) as (4), and in par. (4) inserted reference to subsection (b) in subpar. (B). Former subsec. (c) redesignated (d).

Subsecs. (d), (e). Pub. L. 97-248, §338(a), redesignated former subsec. (c) as (d). Former subsec. (d), relating to definitions, redesignated (e).

1976—Subsecs. (a), (b). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary” whenever appearing.

Subsec. (b)(1). Pub. L. 94-455, §1031(b)(5), substituted in subpar. (A) “section 904(c)” for “section 904(d)”.

Subsec. (c). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

1964—Subsec. (d)(1). Pub. L. 88-554 substituted “subparagraphs (A), (B), and (C) of section 318(a)(3)” for “the second sentence of subparagraphs (A) and (B), and clause (ii) of subparagraph (C), of section 318(a)(2)” in subpar. (A), and deleted “clause (i) of” after “in applying” in subpar. (B).

1962—Subsec. (a)(1). Pub. L. 87-834, among other changes, substituted in introductory provisions “Every United States person shall furnish” for “A domestic corporation shall furnish”, in subpar. (D)(i) “such person” for “any foreign corporation controlled by the domestic corporation”, in subpar. (D)(ii) “any other corporation which such person controls” for “any foreign subsidiary of a foreign corporation controlled by the domestic corporation”, in subpar. (D)(iii) “any United States person owning, at the time the transaction takes place, 10 percent or more of the value of any class of stock outstanding of such foreign corporation” for “the domestic corporation or any shareholder of the domestic corporation owning at the time the transaction takes place 10 percent or more of the value of any class of stock outstanding of the domestic corporation”, and in subpar. (E) “each United States person who is a shareholder” for “each citizen or resident of the United States and each domestic corporation who is a shareholder”, and struck out provisions throughout the subsection which related to foreign subsidiaries.

Subsec. (a)(2). Pub. L. 87-834 substituted provisions requiring the information to be furnished for the annual accounting period ending with or within the United States person’s taxable year for provisions which required such information to be furnished for the annual accounting period ending with or within the domestic corporation’s taxable year, and struck out provisions which related to the furnishing of information in the case of foreign subsidiaries.

Subsec. (a)(3). Pub. L. 87-834 struck out provisions which related to foreign subsidiaries.

Subsec. (b). Pub. L. 87-834, among other changes, substituted “If a United States person fails to furnish” for “If a domestic corporation fails to furnish” in the opening provisions, inserted provisions relating to reduction of taxes in applying sections 901 and 960 of this title, to the maximum amount of reduction under par. (1) for each failure to furnish information with respect to a foreign corporation required under subsec. (a)(1), and making the reduction provided by subsec. (b) inapplicable, in applying subsecs. (a) and (b) of section 902 and subsec. (a) of section 960, for purposes of determining the amount of accumulated profits in excess of income, war profits, and excess profits taxes, and eliminated provisions which related to the furnishing of information with respect to foreign subsidiaries.

Subsec. (c). Pub. L. 87-834 substituted provisions empowering the Secretary to provide for the furnishing of

information by only one person where two or more persons would be required to furnish information under subsec. (a) with respect to the same foreign corporation for the same period for provisions which required a domestic corporation if at any time during its taxable year owned more than 50 percent of the voting stock of a foreign corporation to be deemed to be in control of such foreign corporation, and in the case of a foreign corporation if at any time during its annual accounting period owned more than 50 percent of the voting stock of another foreign corporation, that such other corporation shall be considered a foreign subsidiary of the corporation owning such stock. The provisions relating to control are now contained in subsec. (d) of this section.

Subsec. (d). Pub. L. 87-834 added par. (1) which was formerly covered in part by subsec. (c) of this section, designated existing provisions as par. (2), and eliminated from par. (2) provisions which related to the annual accounting period of a foreign subsidiary.

Subsec. (e). Pub. L. 87-834 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to annual accounting periods beginning after Aug. 5, 1997, see section 1142(f) of Pub. L. 105-34, set out as a note under section 318 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101-239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101-508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7712(b) of Pub. L. 101-239 provided that: “The amendments made by subsection (a) [amending this section] shall apply to returns and statements the due date for which (determined without regard to extensions) is after December 31, 1989.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1202(c) of Pub. L. 99-514 applicable to distributions by foreign corporations out of, and to inclusions under section 951(a) of this title attributable to, earnings and profits for taxable years beginning after Dec. 31, 1986, see section 1202(e) of Pub. L. 99-514, set out as a note under section 902 of this title.

Amendment by section 1245(b)(5) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 1245(c) of Pub. L. 99-514, set out as a note under section 6038A of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 338(d) of Pub. L. 97-248 provided that: “The amendments made by this section [amending this section] shall apply with respect to information for annual accounting periods ending after the date of the enactment of this Act [Sept. 3, 1982].”

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-554 effective Aug. 31, 1964, except that for purposes of sections 302 and 304 of this title, such amendments shall not apply to distributions in payment for stock acquisitions or redemptions, if such acquisitions or redemptions occurred before Aug. 31, 1964, see section 4(c) of Pub. L. 88-554, set out as a note under section 318 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 20(e)(1) of Pub. L. 87-834 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to annual accounting periods of foreign corporations beginning after December 31, 1962.”

EFFECTIVE DATE

Section 6(c) of Pub. L. 86-780, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “The amendments made by subsection (a) [enacting this section and amending section 902 of this title] shall apply to taxable years of domestic corporations beginning after December 31, 1960, with respect to information relating to a foreign corporation or a foreign subsidiary described in section 6038(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) for its annual accounting periods beginning after December 31, 1960.”

§ 6038A. Information with respect to certain foreign-owned corporations

(a) Requirement

If, at any time during a taxable year, a corporation (hereinafter in this section referred to as the “reporting corporation”)—

- (1) is a domestic corporation, and
- (2) is 25-percent foreign-owned,

such corporation shall furnish, at such time and in such manner as the Secretary shall by regulations prescribe, the information described in subsection (b) and such corporation shall maintain (in the location, in the manner, and to the extent prescribed in regulations) such records as may be appropriate to determine the correct treatment of transactions with related parties as the Secretary shall by regulations prescribe (or shall cause another person to so maintain such records).

(b) Required information

For purposes of subsection (a), the information described in this subsection is such information as the Secretary may prescribe by regulations relating to—

(1) the name, principal place of business, nature of business, and country or countries in which organized or resident, of each person which—

- (A) is a related party to the reporting corporation, and
- (B) had any transaction with the reporting corporation during its taxable year,

(2) the manner in which the reporting corporation is related to each person referred to in paragraph (1), and

(3) transactions between the reporting corporation and each foreign person which is a related party to the reporting corporation.

(c) Definitions

For purposes of this section—

(1) 25-percent foreign-owned

A corporation is 25-percent foreign-owned if at least 25 percent of—

- (A) the total voting power of all classes of stock of such corporation entitled to vote, or
- (B) the total value of all classes of stock of such corporation,

is owned at any time during the taxable year by 1 foreign person (hereinafter in this section

referred to as a “25-percent foreign shareholder”).

(2) Related party

The term “related party” means—

(A) any 25-percent foreign shareholder of the reporting corporation,

(B) any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the reporting corporation or to a 25-percent foreign shareholder of the reporting corporation, and

(C) any other person who is related (within the meaning of section 482) to the reporting corporation.

(3) Foreign person

The term “foreign person” means any person who is not a United States person. For purposes of the preceding sentence, the term “United States person” has the meaning given to such term by section 7701(a)(30), except that any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States shall not be treated as a United States person.

(4) Records

The term “records” includes any books, papers, or other data.

(5) Section 318 to apply

Section 318 shall apply for purposes of paragraphs (1) and (2), except that—

(A) “10 percent” shall be substituted for “50 percent” in section 318(a)(2)(C), and

(B) subparagraphs (A), (B), and (C) of section 318(a)(3) shall not be applied so as to consider a United States person as owning stock which is owned by a person who is not a United States person.

(d) Penalty for failure to furnish information or maintain records

(1) In general

If a reporting corporation—

(A) fails to furnish (within the time prescribed by regulations) any information described in subsection (b), or

(B) fails to maintain (or cause another to maintain) records as required by subsection (a),

such corporation shall pay a penalty of \$10,000 for each taxable year with respect to which such failure occurs.

(2) Increase in penalty where failure continues after notification

If any failure described in paragraph (1) continues for more than 90 days after the day on which the Secretary mails notice of such failure to the reporting corporation, such corporation shall pay a penalty (in addition to the amount required under paragraph (1)) of \$10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period.

(3) Reasonable cause

For purposes of this subsection, the time prescribed by regulations to furnish information or maintain records (and the beginning of