

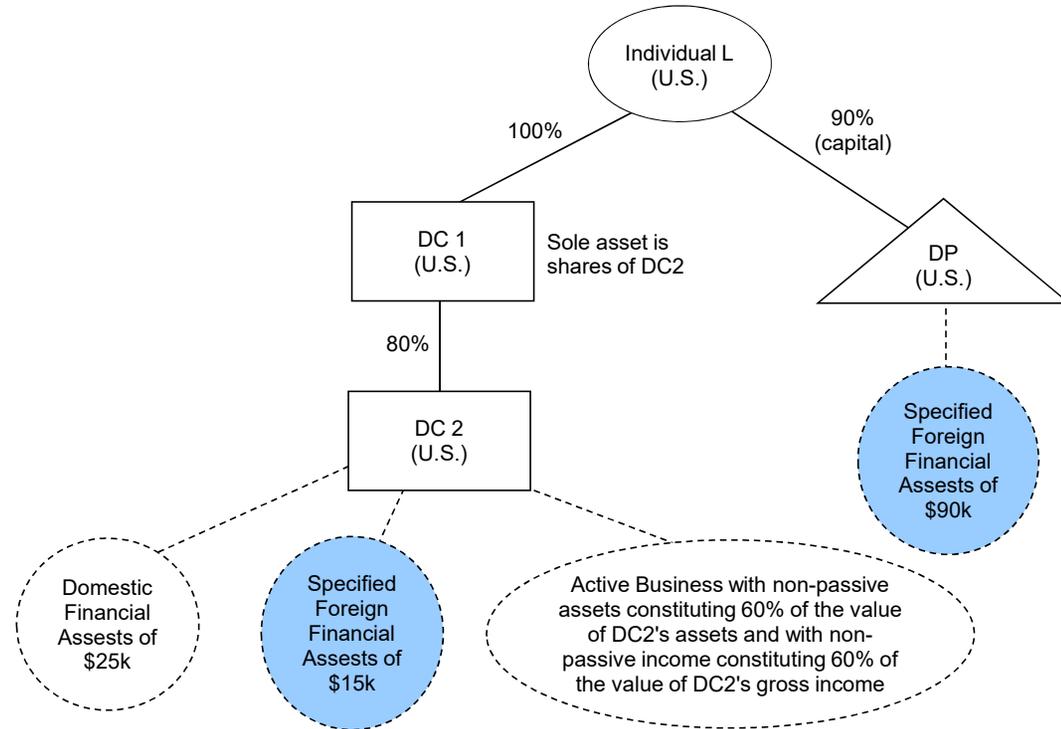
Reg. 1.6038D-6(b)(4), Example 3

Form 8938: Aggregation Rule & Entity With Active Business

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L is a specified individual. In Year X, L wholly owns DC1, a domestic corporation, and also owns a 90% capital interest in DP, a domestic partnership. DC1 owns 80% of the sole class of stock of DC2, a domestic corporation. DC1 has no assets other than its interest in DC2. DC2's only assets are assets that produce passive income, with a maximum value in Year X of \$40,000 on October 12. DC2's assets are comprised in relevant part of specified foreign financial assets with a maximum value in Year X of \$15,000 on October 12. DP's only assets are assets that produce passive income and that are specified foreign financial assets with a maximum value of \$90,000 in Year X on October 12.

DC2 also owns an active business. The assets attributable to the business are not passive assets and constitute at least 60% of the value of DC2's assets at all times during Year X. The income from the business is not passive income and constitutes at least 60% of the gross income generated by DC2 in Year X.



DC1 and DC2 are considered related entities that are connected through stock ownership with a common parent corporation under Reg. 1.6038D-6(b)(3)(iii) because DC1 and DC2 are closely held by L, and DC2 is connected with DC1 through DC1's ownership of stock of DC2 representing at least 80% of the voting power or value of DC2. As a result, for purposes of applying Reg. 1.6038D-6(b)(1)(ii), each of DC1 and DC2 is treated as owning the combined assets, and receiving the combined income, of both DC1 and DC2; however, DC1's equity interest in DC2 is disregarded for this purpose under Reg. 1.6038D-6(b)(3)(iii). As a result, no more than 40 percent of the value of DC1's and DC2's assets at all times during Year X are passive and no more than 40 percent of DC1's and DC2's gross income for Year X is passive. DC1 and DC2 do not satisfy the passive income or passive asset test in Reg. 1.6038D-6(b)(1)(ii) for Year X. DC1 and DC2 are not specified domestic entities for Year X.

DP is closely held by a specified individual for purposes of Reg. 1.6038D-6(b)(2). DP is not considered a related entity with DC1 and DC2 under Reg. 1.6038D-6(b)(3)(iii), because DC1 and DP are not owned by a common parent corporation or partnership. As a result, whether the passive income or passive asset test of Reg. 1.6038D-6(b)(1)(ii) is met with respect to DP is determined solely by reference to DP's separately earned passive income and separately held passive assets. DP holds only passive assets during Year X and therefore satisfies Reg. 1.6038D-6(b)(1)(ii). DP is a specified domestic entity for Year X.

DC1 and DC2 are not specified domestic entities for Year X, and are not required to file Form 8938. Under Reg. 1.6038D-3, DP has an interest in specified foreign financial assets. Under Reg. 1.6038D-2(a)(6)(ii), DP is treated as owning in addition to its own assets the assets of DC2. As a result, DP satisfies the reporting threshold of Reg. 1.6038D-2(a)(1) because the value of the specified foreign financial assets it is considered to own for purposes of Reg. 1.6038D-2(a)(1) is \$105,000 on October 12, Year X, which exceeds DP's \$75,000 reporting threshold. DP must file Form 8938 for Year X to report the specified foreign financial assets in which it has an interest and disclose their maximum values as provided in Reg. 1.6038D-4, which is \$90,000.