

## US Tax Newsletter | August 2016

*This thought leadership paper dwells on reporting requirements under US CBC regulations*



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On June 29, 2016, internal revenue services ('IRS') and Treasury released the final country-by-country ('CbC') reporting regulations that were published on June 30, 2016 in the Federal Register. These will apply to taxable years of ultimate parent entities of US multi-national enterprise ('MNE') groups that begin on or after June 30, 2016, and that have a revenue of \$850 million or more, for the preceding annual accounting period.

Specifically, US persons that are the '*ultimate parent entity*' of a MNE group with an annual revenue of \$850 million or more, for the immediately preceding annual accounting period, will be required to file Form 8975, CbC report, with the IRS. The release of the Form is awaited.

The following information must be included on Form 8975 (*in the form and manner prescribed*) with respect to each constituent entity of the US MNE group, as required:

- The complete legal name of the constituent entity;
- The tax jurisdiction, if any, in which the constituent entity is resident for tax purposes;
- The tax jurisdiction in which the constituent entity is organized or incorporated (*if different from the tax jurisdiction of residence*);
- The tax identification number, if any, used for the constituent entity by the tax administration of the constituent entity's tax jurisdiction of residence; &
- The main business activity or activities of the constituent entity.

In addition, Form 8975 must contain the following information for each tax jurisdiction in which one or more constituent entities of a US MNE group is resident, presented as an aggregate of the information for the constituent entities resident in each tax jurisdiction:

- Revenues generated from transactions with other constituent entities;
- Revenues not generated from transactions with other constituent entities;
- Profit or loss before income tax;
- Total income tax paid on a cash basis to all tax jurisdictions and any taxes withheld on payments received by the constituent entities;
- Total accrued tax expense recorded on taxable profits or losses, reflecting only operations in the relevant annual period and excluding deferred taxes or provisions for uncertain tax liabilities;
- Stated capital, except that the stated capital of a PE must be reported in the tax jurisdiction of residence of the legal entity of which it is a PE, unless there is a defined capital requirement in the PE tax jurisdiction for regulatory purposes;
- Total accumulated earnings, except that accumulated earnings of a PE must be reported by the legal entity of which it is a PE;
- Total number of employees on a fulltime equivalent basis for the treatment of independent contractors and other details; &
- Net book value of tangible assets, which does not include cash or cash equivalents, intangibles, or financial assets.

**Reporting period:**

The reporting period covered by Form 8975 is the period of the ultimate parent entity's applicable financial statement prepared for the 12-month period *(or a 5253-week period described in section 441[f] that ends with or within the ultimate parent entity's taxable year)*. If the ultimate parent entity does not prepare an annual applicable financial statement, then the reporting period covered by Form 8975 is the 12-month period *(or a 5253-week period described in section 441[f] that ends on the last day of the ultimate parent entity's taxable year)*.

**Reconciliation with financial information:**

The financial information reported on Form 8975 may be based on financial statements, books and records, regulatory financial statements, or records used for tax reporting or internal management control purposes, with respect to each constituent entity. It is not necessary to reconcile the revenue, profit, and tax reported in the aggregate, or with respect to a specific tax jurisdiction on Form 8975 to the consolidated financial statements of the US MNE group, or to the tax returns filed in any particular tax jurisdiction. There is also no need to make adjustments for differences in accounting principles applied from tax jurisdiction to tax jurisdiction.

**Timing and manner of filing CbC report:**

Returns on Form 8975 for a reporting period must be filed with the ultimate parent entity's income tax return for the taxable year, in or with which the reporting period ends, on or before the due date *(including extensions)* for filing that person's income tax return, or as otherwise prescribed by Form 8975.

The US person filing Form 8975 as an ultimate parent entity of a US MNE group must maintain records to support the information provided on Form 8975. However, the US person is not required to create and maintain records that reconcile the amounts provided on Form 8975, with the tax returns of any tax jurisdiction or applicable financial statements.

**Penalties:**

Failure to file the CbC report may lead to imposition of the penalties found in section 6038. However, the final regulations say that taxpayers will still have access to possible reasonable cause relief under section 6038, for failure to file. The final regulations do not provide a specific waiver of penalties for US MNE groups, whose ultimate parent entity's taxable year begins on or after the applicability date.

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