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Tax Update

IRS Issues Final Country-By-Country Reporting Regulations and OECD Issues Related Guidance

After the issuance of proposed regulations on the matter late last year, on June 29, 2016, the U.S. Internal Revenue Service (“IRS”) issued final regulations (“CbC Regs.”) on required annual country-by-country (“CbC”) reporting by U.S. ultimate parent entities of multinational enterprise (“MNE”) groups. The CbC Regs. provide guidance on reporting of operations within a territory or possession of the United States, which includes the Commonwealth of Puerto Rico.

Background

CbC reporting is required under Action 13 of the Base Erosion and Profit Shifting (“BEPS”) project of the Organization for Economic Cooperation and Development (“OECD”) and the Group of 20 (G20). While other required transfer pricing documentation is to be filed by the MNEs directly with the local tax administrators, the CbC report is to be filed with the jurisdiction of the tax residence of the ultimate parent entity and shared between jurisdictions through automatic exchange of information between governments. The OECD recommended that the new transfer pricing documentation requirements be implemented for fiscal years beginning on or after January 1, 2016, subject to a review of such requirements in 2020.

Required Information

The CbC Regs. mandate the filing of CbC reports in IRS Form 8975 (not yet released) by groups with annual revenue for the preceding accounting period of at least \$850 million. Such form will be filed with the ultimate parent entity’s income tax return for the tax year, in or with which the reporting period ends, on or before the due date (including extensions) for filing such entity’s income tax return, or as otherwise prescribed by Form 8975. The following information must be included on Form 8975 with respect to each constituent entity of the U.S. MNE group:

1. The complete legal name of the constituent entity;
2. The tax jurisdiction, if any, in which the constituent entity is resident for tax purposes;
3. The tax jurisdiction in which the constituent entity is organized or incorporated (if different from the tax jurisdiction of residence);



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4. The tax identification number, if any, used for the constituent entity by the tax administration of the constituent entity's tax jurisdiction of residence; and
5. The main business activity or activities of the constituent entity.

The following information must be included on Form 8975 with respect to each tax jurisdiction in which one or more constituent entities of a U.S. MNE group is resident, presented as an aggregate of the information for the constituent entities resident in each tax jurisdiction:

1. Revenues generated from transactions with other constituent entities of the U.S. MNE group;
2. Revenues not generated from transactions with other constituent entities of the U.S. MNE group;
3. Profit or loss before income tax;
4. Total income tax paid on a cash basis to all tax jurisdictions, including any taxes withheld on payments received by the constituent entities of the U.S. MNE group;
5. Total accrued tax expense recorded on taxable profits or losses, reflecting only the operations in the relevant annual accounting period and excluding deferred taxes or provisions for uncertain tax positions;
6. Stated capital of all the constituent entities, except that the stated capital of a permanent establishment ("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;
7. Total accumulated earnings, except that accumulated earnings of a PE must be reported by the legal entity of which it is a PE;
8. Total number of employees on a full-time equivalent basis in the relevant tax jurisdiction; and
9. Net book value of tangible assets (defined as excluding cash or cash equivalents and intangibles or financial assets).

Treatment of U.S. Territories

Under the CbC Regs., and for purposes of CbC reporting, a territory or possession of the United States (i.e., American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands) is considered to have fiscal autonomy. The CbC Regs. further provide that a "U.S. territory ultimate parent entity" may designate a U.S. business entity to file Form 8975 on its behalf. A "U.S. territory ultimate parent entity" is, generally, a business entity organized in a U.S. territory or possession that controls a U.S. business entity and is required to file Form 8975.

Effective Date and OECD's Transitional Filing Option

The CbC Regs. apply to reporting periods of ultimate parent entities of U.S. MNE groups beginning on or after June 30, 2016. Nonetheless, the IRS intends to accept voluntary filings of CbC reports for reporting periods that begin on or after January 1, 2016. The same day the CbC Regs. were issued, the OECD issued guidance to, among other things, provide a transitional filing option called "parent surrogate filing" to address the transition issue that arises when jurisdictions implementing CbC reporting under BEPS Action 13 are not able to implement with respect to the fiscal period commencing from January 1, 2016.

You can access the CbC Regs. [here](#) and the related OECD guidance [here](#).

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