

# International Tax Watch

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## The Treasury Finalizes Country-by-Country Reporting Regulations for U.S. Multinationals

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### I. Introduction

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On June 30, 2016, the U.S. Department of the Treasury (the “*Treasury*”) and the IRS (the “*Service*”) finalized regulations (the “*Final Regulations*”) that modify and implement proposed regulations that had been issued on December 23, 2015 (the “*Proposed Regulations*”). The Final Regulations will require annual country-by-country reporting (“*CbC Reporting*”) to be prepared and filed by a U.S. person that functions as the “ultimate parent entity” (the “*Ultimate Parent*”) of a multinational enterprise group (an “*MNE Group*”). The Final Regulations are promulgated under the authority of Section 6038 of the Internal Revenue Code (the “*Code*”),<sup>1</sup> which grants Treasury the authority to require information reporting from U.S. persons with respect to controlled foreign business entities. The Final Regulations require Ultimate Parents to provide information with respect to subsidiary business entities as well as aggregate tax jurisdiction-wide information relating the global allocation of the income, taxes paid and certain indicators of the location of economic activity among jurisdictions in which the U.S. MNE Group operates. In promulgating the Final Regulations, the United States joins the many jurisdictions that have implemented (or are in the process of implementing) CbC Reporting rules, per the instructions set forth in Action 13 of the 2015 Final Report of the OECD’s Base Erosion and Profit Shifting Project.<sup>2</sup> Countries implementing CbC Reporting rules will enter into agreements to share CbC Reporting with one another.<sup>3</sup> CbC Reporting shared between jurisdictions is intended to help jurisdictions perform high-level transfer pricing risk assessments.<sup>4</sup> Action 13 provides a template for jurisdictions to use in crafting CbC Reporting rules (the “*OECD Template*”). The Final Regulations generally follow the OECD Template, while remaining within the limitations of Treasury’s authority to implement regulations under Code Sec. 6038 and other sections of the Code. CbC Reporting imposed by the Final Regulations will be reported on Form 8975, which Treasury and the IRS have yet to release.<sup>5</sup>

## II. Overview of the Final Regulations

Under the Final Regulations, Form 8975 is filed by the “ultimate parent entity” of a U.S. MNE Group, reporting information with respect to the “constituent entities” of the group and their jurisdictions of residence, as follows.

*Under the Final Regulations, Ultimate Parents of U.S. MNE Groups will be required to undertake annual CbC Reporting, filed on Form 8975, beginning with the Ultimate Parent’s first Reporting Period that begins on or after the Ultimate Parent’s first tax year that, in turn, begins on or after June 30, 2016.*

### A. Ultimate Parent

Only an “ultimate parent entity of a U.S. MNE group” files Form 8975.<sup>6</sup> An Ultimate Parent must be a “U.S. business entity,” meaning a business entity that is organized or has its tax jurisdiction of residence inside the United States.<sup>7</sup> The Ultimate Parent must own, directly or indirectly, at least one foreign business entity, with which the Ultimate Parent: (i) is required to consolidate its accounts under U.S. generally accepted accounting principles (*GAAP*) or (ii) would be required to consolidate its accounts, if the Ultimate Parent were traded on a U.S. securities exchange (“*US Consolidated Accounting Entities*”).<sup>8</sup> A U.S. business entity is excluded from being an Ultimate Parent if it is owned, directly or indirectly, by another business entity that: (i) consolidates accounts with such U.S. business entity under *GAAP* or (ii) would be required to consolidate accounts with such U.S. business entity, were the parent entity traded on a public securities exchange in its tax jurisdiction of residence.<sup>9</sup> Thus, in general, an Ultimate Parent is the parent entity of a U.S. parent MNE Group connected through a chain of ownership such that consolidated accounting, for U.S. *GAAP* purposes, would be appropriate.

Consistent with the OECD Template, CbC Reporting is not required for every U.S. corporation that has foreign subsidiaries.<sup>10</sup> It is only required when the highest tier business entity is a U.S. entity.<sup>11</sup> A foreign parent of an MNE Group generally cannot elect into U.S. CbC Reporting,

with one exception. If the top tier parent entity of an MNE Group (that includes a U.S. entity) is organized in a U.S. territory,<sup>12</sup> the top tier parent may designate a U.S. business entity in the MNE Group to file Form 8975 on behalf of the entire MNE Group.<sup>13</sup>

### B. U.S. MNE Group

An Ultimate Parent’s “U.S. MNE Group” is comprised of the Ultimate Parent and all business entities that are U.S. Consolidated Accounting Entities, even if such business entities could be excluded from consolidation solely on size or materiality grounds.<sup>14</sup> The Final Regulations only apply to U.S. MNE Groups with revenue of \$850 million or more.<sup>15</sup>

### C. Constituent Entities

The Final Regulations require an Ultimate Parent to report information with respect to the “constituent entities” in its U.S. MNE Group. A “constituent entity” is a separate “business entity” of an MNE Group, except that a constituent entity does not include any foreign corporation with respect to which the Ultimate Parent is not required to furnish information under Code Sec. 6038.<sup>16</sup> Therefore, a business entity is not a constituent entity of an Ultimate Parent’s U.S. MNE Group: (i) if the business entity is a corporation and the Ultimate Parent’s direct, indirect or constructive interest in such corporation is 50 percent or less, by vote and by value, or (ii) if the business entity is a partnership and the Ultimate Parent’s direct, indirect or constructive interest in such partnership is 50 percent or less, with respect to both capital and profits.<sup>17</sup>

Under the Proposed Regulation, the term “business entity” broadly included any “person” as defined in Code Sec. 7701(a)(1).<sup>18</sup> Such a broad definition included numerous entity types that are not normally utilized to conduct business.<sup>19</sup> The Final Regulations define the term “business entity” more narrowly to encompass only entities that are of the sort used to conduct business, defining “business entity” as any entity recognized for U.S. federal income tax purposes that is not a trust (for U.S. federal tax purposes), a decedent’s estate, a bankruptcy estate or a grantor trust owned by an individual.<sup>20</sup> An entity that is disregarded for U.S. federal tax purposes is a business entity,<sup>21</sup> and so is a “permanent establishment” (a PE), if the PE prepares financial statements separate from its owner for financial reporting, regulatory, tax reporting or internal management control purposes.<sup>22</sup> A PE is a branch or business establishment of a constituent entity: (i) that is treated as a PE in a given jurisdiction under an income tax

treaty, (ii) that is liable to tax in the jurisdiction in which it is located under the jurisdiction's domestic laws or (iii) that is treated in the same manner for tax purposes as an entity separate from its owner by the owner's jurisdiction of residence.<sup>23</sup>

## D. Residence

After an Ultimate Parent identifies the constituent entities in its U.S. MNE Group, the next step is to determine the residence of each constituent entity. The general rule is that a business entity's jurisdiction of residence is the tax jurisdiction<sup>24</sup> in which the entity is liable to tax based on place of management, place of organization or another similar criterion (the "*Tax Residence Rule*").<sup>25</sup> The Proposed Regulations had included a caveat that "a business entity will not be considered a resident in a tax jurisdiction if such business entity is liable to tax in such tax jurisdiction solely with respect to income from sources in such tax jurisdiction, or capital situated in such tax jurisdiction."<sup>26</sup> Commentators had been concerned that such a caveat would prevent a business entity from being a resident of a tax jurisdiction that imposes an income tax on a purely territorial basis (*i.e.*, a jurisdiction that only taxes income sourced to it and that does not tax its residents in their foreign source income).<sup>27</sup> In response to the comments, the Final Regulations modify the caveat to state instead that "[i]f an entity is only subject to tax in a jurisdiction on gross income imposed only on the basis of such income's source, the entity is not treated a resident of such tax jurisdiction."<sup>28</sup> Thus, under the Final Regulations, a business entity can still be a resident of a jurisdiction that imposes an income tax on a purely territorial basis, as long as the jurisdiction taxes such income on a net basis.

Under the Tax Residence Rule, a business entity that is subject to income tax in more than one jurisdiction would be a resident of more than one jurisdiction. In that case, an income tax treaty between the relevant jurisdictions is used to determine the residence of the business entity.<sup>29</sup> Where there is no income tax treaty, the business entity's residence is determined based on its effective place of management.<sup>30</sup> Effective place of management is also used when there is an income tax treaty between the relevant jurisdictions if a determination of residence under the treaty would require the determination of competent authority and no such determination has been made.<sup>31</sup> The Tax Residence Rule does not apply to PEs. Instead, all PEs are treated as residents of the jurisdictions in which they are located.<sup>32</sup>

Based on the Tax Residence Rule, business entities (other than PEs) will have no jurisdiction of residence if they are not subject to entity-level income taxation in any tax

jurisdiction (they are "*Stateless Entities*"). However, the Final Regulations add a special rule that applies to business entities that are treated as corporations, which provides that a corporation that is not subject to income tax in any jurisdiction is a resident of the jurisdiction in which it is managed and controlled if the reason that the corporation is not subject to income tax in any jurisdiction is that the jurisdiction in which it is managed and controlled does not impose a corporate income tax.<sup>33</sup> However, generally, business entities treated as partnerships (or other transparent entities) that are not subject to entity-level tax in any jurisdiction are treated as having no tax jurisdiction of residence and are treated as Stateless Entities.

## E. Form 8975

The Final Regulations require an Ultimate Parent to prepare and file Form 8975 based on the Ultimate Parent's annual Reporting Period (defined below). The reporting that an Ultimate Parent is required to provide on Form 8975 is divided into two categories: (i) information provided with respect to each constituent entity in the Ultimate Parent's MNE Group (the "*Entity Information*"), on an entity-by-entity basis and (ii) information with respect to each tax jurisdiction in which one or more constituent entities in the Ultimate Parent's MNE Group are a resident (the "*Jurisdiction Information*"), provided as an aggregate for each jurisdiction from all constituent entities that are residents therein.

### i. Timing

The period covered by Form 8975 (the "*Reporting Period*") is the period covered by the Ultimate Parent's "applicable financial statement" prepared for the 12-month period (or a 52–53 week period) that ends on the same date or within the Ultimate Parent's tax year.<sup>34</sup> An "applicable financial statement" is certified audited financial statements accompanied by a report of an independent certified public accountant or of a similar qualified independent professional used for reporting to shareholders, partners or similar persons; for the purpose of reporting to creditors in connection with securing or maintaining financing; or for a substantial nontax purpose.<sup>35</sup> If the Ultimate Parent does not prepare an annual applicable financial statement, its Reporting Period is its tax year.<sup>36</sup> Form 8975 is filed with the Ultimate Parent's income tax return for the tax year in or with which the Ultimate Parent's Reporting Period ends.<sup>37</sup>

An Ultimate Parent will be obligated to file Form 8975 beginning with respect to its first Reporting Period that begins on or after the first day of such Ultimate Parent's

tax year that begins on or after June 30, 2016.<sup>38</sup> Thus, for example, for Ultimate Parents whose Reporting Periods and tax years follow the calendar year, such Ultimate Parents' first mandatory Form 8975 will cover their January 1, 2017, to December 31, 2017, Reporting Period, which must be filed with their 2017 tax return. The preamble to the Final Regulations (the "Preamble") provides, however, that Treasury will provide guidance for entities desiring to file voluntarily before their first mandatory filing is required.<sup>39</sup> As we will explain in further detail below, this is so other countries' CbC Reporting rules will not require foreign subsidiaries of U.S. MNE Groups to file CbC Reporting locally.

The Treasury had indicated that there will be no penalty-free grace period once CbC Reporting becomes necessary for an Ultimate Parent, providing that the penalty rules under Code Sec. 6038 will generally apply,<sup>40</sup> including reasonable cause for failure to file.<sup>41</sup> One would expect, however, that reasonable cause would be more liberally allowed for errors committed by taxpayers required to file Form 8975 with their 2016 return.

## ii. Constituent Entity Information

Form 8975 will require an Ultimate Parent to report certain Entity Information and certain Jurisdiction Information. The Entity Information that Form 8975 will require relatively simple and straightforward. For each Constituent entity, the Ultimate Parent must provide: (1) the entity's name; (2) the tax jurisdiction, if any, in which the entity is a resident; (3) the tax jurisdiction in which the entity is organized or incorporated; (4) the tax identification number, if any, using in the entity's tax jurisdiction of residence; and (5) the main business activity or activities of the entity.<sup>42</sup>

## iii. Jurisdiction Information

The Jurisdiction Information that an Ultimate Parent must provide is far more nuanced and complex. The Jurisdiction Information is not reported on an entity-by-entity basis.<sup>43</sup> Rather, it is provided by aggregating all of the Jurisdiction Information for an Ultimate Parent's constituent entities that are residents of a particular tax jurisdiction and reporting the information in the aggregate on a jurisdiction by jurisdiction basis. The Jurisdiction Information that an Ultimate Parent must provide can be broken down as follows.

(a) *Revenue Information.* An Ultimate Parent must report all revenues generated by all constituent entities resident in a jurisdiction from transactions with other constituent entities.<sup>44</sup> Separately, the Ultimate Parent must also report all revenues generated by all

constituent entities resident in a jurisdiction that are not from transactions with other constituent entities.<sup>45</sup> A constituent entity's revenue includes all amounts of revenue, including revenue from sales of inventory and property, services, royalties, interest and premium.<sup>46</sup> However, the term revenue excludes: (i) payments received from other constituent entities that are treated as dividends in the payor's tax jurisdiction of residence; (ii) distributions from partnerships, other fiscally transparent entities and PEs (that are constituent entities); and (iii) imputed earnings or deemed dividends received from other constituent entities that are taken into account solely for tax purposes.<sup>47</sup>

(b) *Tax Information.* An Ultimate Parent must report its aggregate pre-income tax profits or losses from constituent entities residing in a tax jurisdiction.<sup>48</sup> The Ultimate Parent must also report total income tax paid by all constituent entities residing in a tax jurisdiction.<sup>49</sup> Taxes paid are determined on a cash basis and include taxes paid to all jurisdictions, and any taxes withheld on payments received by the constituent entities resident in the tax jurisdiction.<sup>50</sup> Finally, the Ultimate Parent must report total accrued tax expenses recorded on taxable profits or losses for all constituent entities residing in a tax jurisdiction.<sup>51</sup> The report must reflect only accrued taxes on operations in the relevant annual period.<sup>52</sup> Accrued tax expenses do not include deferred taxes or provisions for uncertain tax liabilities.<sup>53</sup> Additionally, when a PE is treated as a separate constituent entity, the business entity of which the PE is a PE (the "PE Principal") does not report the income taxes paid or accrued by the PE in PE Principal's own jurisdiction of residence.<sup>54</sup>

(c) *Employee Information.* An Ultimate Parent must report the total number of employees "on a full-time equivalent basis" for all constituent entities resident in a given tax jurisdiction.<sup>55</sup> The Proposed Regulations had included a limitation that only allowed the employees of a constituent entity to be reported in the constituent entity's jurisdiction of residence if the employees were also situated "in the relevant tax jurisdiction."<sup>56</sup> This requirement is removed in the Final Regulations, and the Preamble specifically states that a constituent entity's employees are reported in the constituent entity's tax jurisdiction regardless of the location where the employees perform their duties as employees.<sup>57</sup> The Preamble further notes that this approach adopted in the Final Regulations is more consistent with the OECD Template.<sup>58</sup> A further important point to note with respect to employees is that the standard or common law meaning for the term "employee" is not used by the Final Regulations, as independent contractors participating in the ordinary operating activities

of a constituent entity are reported as the employees of a constituent entity.<sup>59</sup>

(d) *Other Information.* An Ultimate Parent must also report: (i) total stated capital of all constituent entities in each jurisdiction; (ii) total accumulated earnings of all constituent entities in each jurisdiction; and (iii) the net book value of tangible assets, not including cash, cash equivalents, intangibles or financial assets of all constituent entities in each jurisdiction.<sup>60</sup> For a PE, its E & P is the capital reflected in the tax jurisdiction of the PE's PE Principal.<sup>61</sup> Similarly, the stated capital of a PE is reported in the tax jurisdiction of residence of its PE Principal, unless there is a defined capital requirement in the PE's tax jurisdiction for regulatory purposes.<sup>62</sup>

(e) *Stateless Entities.* Stateless Entities are subject to a special rule that double-counts their Jurisdiction Information. The Jurisdiction Information for all Stateless Entities is aggregated and reported as though all Stateless Entities were residents of a single jurisdiction.<sup>63</sup> In addition, each Stateless Entity's Jurisdiction Information is also added to the Jurisdiction Information for the jurisdiction in which the Stateless Entity's owner is a resident.<sup>64</sup> For example, if a U.S. MNE Group was comprised of: (i) an Ultimate Parent; (ii) two corporations, C1 and C2, that are U.K. residents; (iii) a passthrough entity, P1, in which C1 and C2 are partners, that has elected to be treated as a corporation; and (iv) two corporations, C3 and C4, that were French residents; the U.S. MNE Group's Jurisdiction Information would be reported as follows. The Ultimate Parent would aggregate the Jurisdiction Information for C1, C2 and P1 and report it as the Jurisdiction Information for the United Kingdom. The Ultimate Parent would aggregate the Jurisdiction Information for C3 and C4 and report it as the Jurisdiction Information for France. Finally, the Ultimate Parent would report the Jurisdiction Information for P1 on a separate row for Stateless Entities. As a result, P1's Jurisdiction Information is counted twice.

(f) *Source of Reporting Data.* Under the Proposed Regulations, all amounts reported needed to be based on an applicable financial statement, books and records maintained with respect to the constituent entity or records used for tax reporting.<sup>65</sup> The Final Regulations add that regulatory financial statements and records used for internal management control purposes may also be used (all together, the "Reporting Source Materials").<sup>66</sup> Importantly, there is no requirement that the information be assembled on the same basis in each country. The Final Regulations also clarify that Ultimate Parents will use the Reporting Source Materials prepared with respect to the annual period of each constituent entity ending within

the Ultimate Parent's Reporting Period.<sup>67</sup> Therefore, the Ultimate Parent may use an array of different Reporting Source Materials covering the different annual periods of different constituent entities. Presumably then, a calendar year Ultimate Parent may use the local statutory books and records of one constituent entity covering

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the entity's accounting period beginning in July and ending in June and, for a different constituent entity, the Ultimate Parent could use the local tax reporting records for the entity that cover the entity's accounting period that follows the calendar year. Suffice it to say, the information from the Ultimate Parent's various constituent entities generally will not fall into place to form a balanced and coherent representation of the U.S. MNE Group's consolidated financials for the Ultimate Parent's Reporting Period. It is, therefore, fortunate that the Final Regulations do not require the Ultimate Parent to make a reconciliation of the amounts reported with respect to the various constituent entities.<sup>68</sup>

### III. Issues to Highlight

Above we describe and analyze the provisions set forth in Final Regulations. A few particularly notable and important provisions are developed in further detail below.

#### A. Employees of Constituent Entities

The Final Regulations provide that the employees of a constituent entity are to be reported in the constituent entity's jurisdiction of residence even though the employees do not perform their duties as employees within the jurisdiction. This means, for example, that when an Ultimate Parent has a constituent entity in a low-tax jurisdiction with 100 independent contractors working in high-tax jurisdictions, the Ultimate Parent will presumably be able to report the 100 contractors as employees in the low-tax jurisdiction, even though the contractors all work in a high-tax jurisdiction. Keep in mind, the purpose of requiring U.S. MNE

Groups to report the employees in a given jurisdiction is to help determine whether the profits earned in the jurisdiction align with the substance in the jurisdiction, with employees being an indicator of substance. This rule could be quite helpful to taxpayers that have low-tax or stateless entities with profit, but no employees. If these entities have independent contractors to perform marketing or R & D, they can apparently reflect those individuals on their CbC Reporting.

## B. Voluntary Filing

The OECD Template suggests that a country may force a constituent entity of an MNE Group to file CbC Reporting for any Reporting Period where the constituent entity is parented by an entity in a jurisdiction that has not implemented CbC Reporting rules.<sup>69</sup> Countries adopting this rule will generally require CbC Reporting from locally situated constituent entities of U.S. MNE Groups, if the group's Ultimate Parent does not file CbC Reporting for its first Reporting Period beginning on or after January 1, 2016.<sup>70</sup>

The Final Regulations will not require calendar year Ultimate Parents to file Form 8975 for their 2016 Reporting Period (beginning on January 1, 2016). Thus, absent relief, these taxpayers could be forced to file a report in a foreign jurisdiction for 2016. To remedy this issue for U.S. MNE Groups, the Preamble indicates that Treasury and the IRS will provide guidance under which Ultimate Parents will be able to voluntarily file U.S. CbC Reporting that will cover Reporting Periods that begin on or after January 1, 2016.<sup>71</sup> U.S. MNE Groups with operations in jurisdictions that require reporting for 2016 should pay close attention to this forthcoming guidance.

## C. Source of Information for CbC Reporting

The information reported for constituent entities may come from different kinds of Reporting Source Materials. Moreover, the periods reported by Reporting Source Materials for different constituent entities apparently do

not need to match-up between constituent entities or with the Ultimate Parent's Reporting Period. Instead, the local year just needs to fall within the Ultimate Parent's year. Furthermore, there is no need to reconcile or balance amounts reported with respect to different constituent entities and used for reporting on Form 8975. This should come as a relief to Ultimate Parents that would otherwise face an enormous burden gathering and processing the data to be reported. Under the Final Regulations, Ultimate Parents will be able to use reports that constituent entities generate in the ordinary course of their business, reporting the end-of-year numbers from such reports, no matter when the constituent entity's year end falls.

## IV. Conclusion

Under the Final Regulations, Ultimate Parents of U.S. MNE Groups will be required to undertake annual CbC Reporting, filed on Form 8975, beginning with the Ultimate Parent's first Reporting Period that begins on or after the Ultimate Parent's first tax year that, in turn, begins on or after June 30, 2016. Fortunately, Treasury has also committed to provide procedures that will allow Ultimate Parents to file voluntarily for earlier periods, so that Ultimate Parents will have a way to prevent their constituent entities from becoming individually subject to the CbC Reporting obligations implemented in other jurisdictions. The Final Regulations make a number of pro-taxpayer changes to the Proposed Regulations that better conform the final U.S. CbC Reporting rules to OECD Template. Most notably, the Final Regulations: (i) broaden the circumstances under which a constituent entity's employees may be reported as employees in the constituent entity's tax jurisdiction and (ii) substantially reduce the administrative burden in gathering constituent entity information to be reported on Form 8975. However, Stateless Entity reporting remains a major issue under the Final Regulations as it may cause legitimate business structures to be flagged for foreign audits.

### ENDNOTES

<sup>1</sup> All "Code Sec." references hereinafter refer to Sections of the Code of 1986, as amended, unless indicated otherwise.

<sup>2</sup> See OECD/G20 Bases Erosion and Profit Shifting Project, Transfer Pricing Documentation and Country-by-Country Reporting, Action 13—2015 Final Report [hereinafter "Action 13"].

<sup>3</sup> See Action 13 at 18–23; T.D. 9773, June 30, 2016, ¶ 16.

<sup>4</sup> See *id.*, at 16. Tax administrations are encouraged to use CbC Reporting to evaluate other BEPs related risks, but they are admonished not to use CbC Reporting to make transfer pricing adjustments on the basis of formulary apportionment. *Id.*

<sup>5</sup> T.D. 9773, June 30, 2016, ¶ 2.

<sup>6</sup> Reg. §1.6038-4(a).

<sup>7</sup> Reg. §1.6038-4(b)(1) and (4).

<sup>8</sup> Reg. §1.6038-4(b)(1)(i).

<sup>9</sup> Reg. §1.6038-4(b)(1)(ii).

<sup>10</sup> See Action 13 at 40–41 (Article 1, para. 6 of the OECD Template); Reg. §1.6038-4(b)(1).

<sup>11</sup> See *supra* note 10. This may not always be the case, for example, where: (i) a foreign business entity owns a second tier U.S. business entity (that owns one or more foreign business entities); (ii) the foreign business entity does not

actually consolidate accounts with the U.S. business entity; and (iii) the foreign business entity is a resident of a jurisdiction that does not have a public market for securities. Under a strict reading of the Final Regulations, the second tier U.S. business entity would be an Ultimate Parent. See Reg. §1.6038-4(b)(1)(ii).

<sup>12</sup> American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands. Reg. §1.6038-4(b)(10).

<sup>13</sup> Reg. §1.6038-4(j).

<sup>14</sup> Reg. §1.6038-4(b)(5).

<sup>15</sup> Reg. §1.6038-4(h). If the U.S. MNE Group has \$850 million or more in a Reporting Period (defined below), its Ultimate Parent will have an obligation to file Form 8975 for the subsequent Reporting Period. *Id.*

<sup>16</sup> Reg. §1.6038-4(b)(6).

<sup>17</sup> See Code Sec. 6038(e)(2)–(3). “Corporation” means an entity treated as a corporation for U.S. federal income tax purposes, and “partnership” means an entity treated as a partnership for U.S. federal income tax purposes.

<sup>18</sup> Proposed Reg. §1.6038-4(b)(2) (2015).

<sup>19</sup> See, e.g., Reg. §301.7701-2(a) providing a narrower definition of “business entity” for the purpose of the check-the-box regulations.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Reg. §1.6038-4(b)(3).

<sup>23</sup> *Id.*

<sup>24</sup> The Final Regulations treat any country or fiscally autonomous jurisdiction (including ter-

ritories and possessions of the United States) as “tax jurisdictions.”

<sup>25</sup> Reg. §1.6038-4(b)(8).

<sup>26</sup> Proposed Reg. §1.6038-4(b)(6) (2015).

<sup>27</sup> T.D. 9773, June 30, 2016, ¶ 13.

<sup>28</sup> Reg. §1.6038-4(b)(8).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Compare *id.* with Proposed Reg. §1.6038-4(b)(6) (2015).

<sup>34</sup> Reg. §1.6038-4(c).

<sup>35</sup> Reg. §1.6038-4(b)(9).

<sup>36</sup> Reg. §1.6038-4(c).

<sup>37</sup> Reg. §1.6038-4(f).

<sup>38</sup> Reg. §1.6038-4(k).

<sup>39</sup> T.D. 9773, June 30, 2016, ¶ 8.

<sup>40</sup> Generally speaking, such penalty is \$10,000 per entity with respect to which reporting is missing per Reporting Period. See Section 6038(b)(1); Reg. §1.6038-2(k)(1)(i). Additional penalties apply if the failure continues after the IRS notifies the taxpayer of the failure. See Section 6038(b)(2); Reg. §1.6038-2(k)(1)(ii). In certain circumstances, the penalty is applied by reducing foreign tax credits instead imposing a monetary penalty. See Section 6038(c); Reg. §1.6038-2(k)(2).

<sup>41</sup> T.D. 9773, June 30, 2016, ¶ 17.

<sup>42</sup> Reg. §1.6038-4(d)(1).

<sup>43</sup> Reg. §1.6038-4(d)(2).

<sup>44</sup> Reg. §1.6038-4(d)(2)(i).

<sup>45</sup> Reg. §1.6038-4(d)(2)(ii).

<sup>46</sup> Reg. §1.6038-4(d)(3)(ii).

<sup>47</sup> *Id.*

<sup>48</sup> Reg. §1.6038-4(d)(2)(iii).

<sup>49</sup> Reg. §1.6038-4(d)(2)(iv).

<sup>50</sup> *Id.*

<sup>51</sup> Reg. §1.6038-4(d)(2)(v).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Reg. §1.6038-4(d)(3)(iv).

<sup>55</sup> Reg. §1.6038-4(d)(2)(viii).

<sup>56</sup> Proposed Reg. §1.6038-4(2)(viii) (2015).

<sup>57</sup> See T.D. 9773, June 30, 2016, ¶ 10.

<sup>58</sup> See *id.*; see also Action 13 at 34.

<sup>59</sup> *Id.*

<sup>60</sup> Reg. §1.6038-4(d)(2)(vi), (vii) and (ix).

<sup>61</sup> Reg. §1.6038-4(d)(2)(vii).

<sup>62</sup> Reg. §1.6038-4(d)(2)(vi).

<sup>63</sup> Reg. §1.6038-4(d)(3)(i).

<sup>64</sup> *Id.*; see also T.D. 9773, June 30, 2016, ¶ 5.

<sup>65</sup> Proposed Reg. §1.6038-4(e)(2) (2015).

<sup>66</sup> Reg. §1.6038-4(e)(2).

<sup>67</sup> *Id.*

<sup>68</sup> Reg. §1.6038-4(e)(2).

<sup>69</sup> Action 13 at 40–41 (Article 2, para. 2).

<sup>70</sup> See *id.*, at 13 (Article 8). A number of countries have implemented CbC Reporting effective for reporting periods beginning on or after January 1, 2016. These countries include the United Kingdom, the Netherlands, Ireland, Belgium, Spain, France, Italy, Mexico, South Africa, Denmark, Australia, Japan and Poland.

<sup>71</sup> T.D. 9773, June 30, 2016, ¶ 8.

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