[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9773]

RIN 1545-BM70

Country-by-Country Reporting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that require annual country-by-country reporting by certain United States persons that are the ultimate parent entity of a multinational enterprise group. The final regulations affect United States persons that are the ultimate parent entity of a multinational enterprise group that has annual revenue for the preceding annual accounting period of $850,000,000 or more.

DATES: Effective Date: These regulations are effective [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

Applicability Date: For dates of applicability, *see* §1.6038-4(k).

FOR FURTHER INFORMATION CONTACT: Melinda E. Harvey, (202) 317-6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The IRS intends that the information collection requirements in these regulations will be satisfied by submitting a new reporting form, Form 8975, *Country-by-Country Report*, with an income tax return. For purposes of the Paperwork Reduction Act, the reporting burden associated with the collection of information in these regulations will be reflected in the OMB Form 83-1, *Paperwork Reduction Act Submission*, associated with Form 8975.

Background

This document contains amendments to 26 CFR part 1. On December 23, 2015, a notice of proposed rulemaking (REG-109822-15) relating to the furnishing of country-by-country (CbC) reports by certain United States persons (U.S. persons) was published in the **Federal Register** (80 FR 79795). A public hearing was requested and was held on May 13, 2016. Comments responding to the notice of proposed rulemaking were received. After consideration of the comments, the proposed regulations are adopted as amended by this Treasury decision. The public comments and revisions are discussed below.

Summary of Comments and Explanation of Revisions

1. United States Participation in CbC Reporting

Multiple comments expressed support for the implementation of CbC reporting in the United States. However, one comment recommended that the Treasury Department and the IRS decline to implement CbC reporting because, according to the comment, U.S. multinational enterprise (MNE) groups' direct costs of compliance will exceed the United States Treasury's revenue gains, and there will be high, unanticipated costs from inadvertent disclosures of sensitive information. This

recommendation is not adopted. U.S. MNE groups will be subject to CbC filing obligations in other countries in which they do business if the United States does not implement CbC reporting. Thus, a decision by the Treasury Department and the IRS not to implement CbC reporting will result in no compliance cost savings to U.S. MNE groups. In fact, failure to adopt CbC reporting requirements in the United States may increase compliance costs because U.S. MNE groups may be subject to CbC filing obligations in multiple foreign tax jurisdictions. U.S. MNE groups might also be subject to varying CbC filing rules and requirements in different foreign tax jurisdictions, such as requirements to prepare the CbC report using the local currency or language.

In addition, CbC reports filed with the IRS and exchanged pursuant to a competent authority arrangement benefit from the confidentiality requirements, data safeguards, and appropriate use restrictions in the competent authority arrangement. If a foreign tax jurisdiction fails to meet the confidentiality requirements, data safeguards, and appropriate use restrictions set forth in the competent authority arrangement, the United States will pause exchanges of all reports with that tax jurisdiction. Moreover, if such tax jurisdiction has adopted CbC reporting rules that are consistent with the 2015 Final Report for Action 13 (Transfer Pricing Documentation and Country-by-Country Reporting) of the Organisation for Economic Co-operation and Development (OECD) and Group of Twenty (G20) Base Erosion and Profit Shifting (BEPS) Project (Final BEPS Report), the tax jurisdiction will not be able to require any constituent entity of the U.S. MNE group in the tax jurisdiction to file a CbC report. The ability of the United States to pause exchange creates an additional incentive for foreign tax jurisdictions to

uphold the confidentiality requirements, data safeguards, and appropriate use restrictions in the competent authority arrangement.

2. Form 8975, *Country-by-Country Report*

At the time of publication of the proposed regulations, the country-by-country reporting form described in the proposed regulations had not been officially numbered and was referred to in the proposed regulations as Form XXXX, *Country-by-Country Report*. The country-by-country reporting form remains under development but has been officially numbered. The final regulations amend the proposed regulations to reflect the official number of the form, Form 8975, *Country-by-Country Report*, (Form 8975 or CbCR).

3. Constituent Entities and Persons Required to File Form 8975

In the preamble to the proposed regulations, the Treasury Department and the IRS requested comments regarding whether additional guidance was needed for determining which U.S. persons must file Form 8975 or which entities are considered constituent entities of the filer. Specifically, the Treasury Department and the IRS requested comments on whether additional guidance on the definition of a U.S. MNE group was necessary to address situations where U.S. generally accepted accounting principles (GAAP) or U.S. securities regulations permit or require consolidated financial accounting for reasons other than majority ownership, as well as situations, if any, where U.S. GAAP or U.S. securities regulations permit separate financial accounting with respect to majority-owned enterprises.

A. Variable interest entities

Multiple comments addressed the inclusion of variable interest entities (VIEs) as constituent entities that are part of the U.S. MNE group. In general, a VIE may be consolidated with another entity for financial accounting purposes, even though that other entity may not control the VIE within the meaning of section 6038(e). Some comments recommended against expanding the definition of a U.S. MNE group to include VIEs and further recommended that, if those entities are nonetheless included, an exception should apply in cases in which the U.S. MNE group is unable to obtain the necessary information from a VIE. Other comments expressed concern that entities like VIEs would be part of the MNE group for purposes of foreign law relating to CbC reporting and, for consistency with such law, recommended that U.S. MNE groups be permitted to include such entities. Still other comments recommended that the definition of constituent entity should not be limited to majority-owned entities and should be expanded to include entities in which the ultimate parent entity owns, directly or indirectly, a 20-percent or greater equity interest.

The final regulations do not modify the definition of constituent entity in the proposed regulations. Because the final regulations are promulgated under the authority of section 6038, the definition of control in section 6038(e) limits the foreign business entities for which U.S. persons can be required to furnish information. Thus, the information described in §1.6038-4(d)(1) and (2) is not required for foreign corporations or foreign partnerships for which the ultimate parent entity is not required to furnish information under section 6038(a) (determined without regard to §§1.6038-2(j) and 1.6038-3(c)) or any permanent establishment of such foreign corporation or foreign partnership.

B. Permanent establishments

Under proposed §1.6038-4(b)(2), a business entity includes a business establishment in a jurisdiction that is treated as a permanent establishment under an income tax convention to which that jurisdiction is a party, or that would be treated as a permanent establishment under the OECD Model Tax Convention on Income and on Capital 2014 (OECD Model Tax Convention), and that prepares financial statements separate from those of its owner for financial reporting, regulatory, tax reporting, or internal management control purposes. One comment recommended that the reference to the OECD Model Tax Convention be revised to account for changes to the definition of permanent establishment that will be incorporated into the OECD Model Tax Convention as a result of work under Action 7 (Preventing the Artificial Avoidance of Permanent Establishment Status) of the BEPS Project.

Upon further consideration, and taking into account the comment received, the Treasury Department and the IRS have determined it would be more appropriate for the final regulations to modify the proposed regulations' reference to a permanent establishment in the definition of business entity for greater clarity and consistency with the intended meaning of the Final BEPS Report. Accordingly, the final regulations provide that the term permanent establishment includes (i) a branch or business establishment of a constituent entity in a tax jurisdiction that is treated as a permanent establishment under an income tax convention to which that tax jurisdiction is a party, (ii) a branch or business establishment of a constituent entity that is liable to tax in the tax jurisdiction in which it is located pursuant to the domestic law of such tax jurisdiction, or (iii) a branch or business establishment of a constituent entity that is treated in the

same manner for tax purposes as an entity separate from its owner by the owner's tax jurisdiction of residence. This approach is more consistent with the Final BEPS Report and generally would avoid the need for a U.S. MNE group that has already determined under applicable law whether it has a permanent establishment or a taxable business presence in a particular jurisdiction to make another determination under the OECD Model Tax Convention solely for purposes of completing the CbCR.

C. Grantor trusts and decedents' estates

Proposed §1.6038-4(b)(2) defines a business entity as a person, as defined in section 7701(a)(1), that is not an individual. Under this definition, a grantor trust with an individual owner or owners would be a business entity that could be subject to CbC reporting, notwithstanding that the individual owner or owners are generally treated as the owner of the grantor trust's property for federal income tax purposes and would not be subject to CbC reporting if they owned the property directly. Similarly, under the proposed regulations, a decedent's estate would be a business entity that could be subject to CbC reporting, notwithstanding that during the decedent's lifetime, he or she was an individual exempt from CbC reporting. Additionally, under the proposed regulations, an individual's bankruptcy estate would be a business entity that could be subject to CbC reporting, notwithstanding that before entering bankruptcy, the individual debtor would not be subject to CbC reporting. In light of the nature of grantor trusts, decedents' estates, and individuals' bankruptcy estates and their close connection to individual grantors, decedents, and individual debtors, the Treasury Department and the IRS have determined that it is not appropriate to include grantor trusts with only individual owners, decedents' estates, and individuals' bankruptcy estates in the

definition of business entity. Accordingly, the final regulations exclude decedents' estates, individuals' bankruptcy estates, and grantor trusts within the meaning of section 671, all the owners of which are individuals, from the definition of business entity.

D. Deemed domestic corporations

The proposed regulations define a U.S. business entity as a business entity that is organized, or has its tax jurisdiction of residence, in the United States. One comment requested that the final regulations clarify whether companies that elect to be treated as domestic corporations under section 953(d) will be treated as U.S. business entities resident in the United States. In response to this comment, the final regulations expressly provide that foreign insurance companies that elect to be treated as domestic corporations under section 953(d) are U.S. business entities that have their tax jurisdiction of residence in the United States.

4. National Security Exception

The preamble to the proposed regulations requested comments on the need for a national security exception for reporting CbC information and on procedures for a taxpayer to demonstrate that such an exception is warranted. Multiple comments stated that the information provided on a CbCR does not present a national security concern. Other comments recommended that the final regulations include a national security exception but did not recommend an appropriate scope of the exception or procedures to demonstrate that an exception is warranted in a particular case. One comment recommended that no information should appear on a CbCR with respect to activities performed by a constituent entity of a U.S. MNE group under a U.S. government contract with certain agencies. Other comments recommended a bright-line test

whereby U.S. MNE groups that conduct a majority of their business with the U.S. Department of Defense or U.S. government intelligence or security agencies could claim an automatic exception from reporting any information other than identifying information, such as company names, jurisdictions of incorporation, tax identification numbers, and addresses. These comments also recommended that U.S. MNE groups that conduct a significant amount (for example, more than 25 percent) of their business with the U.S. Department of Defense or U.S. government intelligence or security agencies should be allowed, with the approval of the IRS, to claim a similar exemption from reporting.

The Treasury Department and the IRS have consulted with the Department of Defense regarding the information collected on the CbCR. The Department of Defense concluded that such information reporting generally does not pose a national security concern. Accordingly, the final regulations do not provide a general exception for information that may relate to national security. Nonetheless, the Department of Defense continues to consider the national security implications of the CbCR in particular fact patterns, and future guidance may be issued to provide procedures for taxpayers to consult with the Department of Defense regarding the appropriate presentation of CbC information in such fact patterns.

5. Partnerships and Stateless Entities

A business entity that is treated as a partnership in the tax jurisdiction in which it is organized and that does not own or create a permanent establishment in that or another tax jurisdiction generally will have no tax jurisdiction of residence under the definition in proposed §1.6038-4(b)(6) other than for purposes of determining the

ultimate parent entity of a U.S. MNE group. Under the proposed regulations, tax jurisdiction information with respect to constituent entities that do not have a tax jurisdiction of residence, or "stateless entities," would be aggregated and reported in a separate row of the CbCR. The preamble to the proposed regulations indicates that partners of a partnership that is a stateless entity would report their respective shares of the partnership's items in their respective tax jurisdiction(s) of residence.

A comment requested clarification as to whether the partnership or its partners, or both, should report the partnership's CbC information. In response, the final regulations provide that the tax jurisdiction of residence information with respect to stateless entities is provided on an aggregate basis for all stateless entities in a U.S. MNE group and that each stateless entity-owner's share of the revenue and profit of its stateless entity is also included in the information for the tax jurisdiction of residence of the stateless entity-owner. This rule applies irrespective of whether the stateless entity-owner is liable to tax on its share of the stateless entity's income in the owner's tax jurisdiction of residence. In other words, the stateless entity-owner reports its share of the stateless entity's revenues and profits in the owner's tax jurisdiction of residence even if that jurisdiction treats the stateless entity as a separate entity for tax purposes. In the case in which a partnership creates a permanent establishment for itself or its partners, the CbC information with respect to the permanent establishment is not reported as stateless, but instead is reported as part of the information on the CbCR for the permanent establishment's tax jurisdiction of residence.

A comment requested clarification regarding whether distributions from partnerships and other fiscally transparent entities should be excluded from

owners'/partners' reported revenue. In response, the final regulations clarify that distributions from a partnership to a partner are not included in the partner's revenue. Additionally, the final regulations provide that remittances from a permanent establishment to its constituent entity-owner are not included in the constituent entity-owner's revenue.

6. Clarification of Terms

The preamble to the proposed regulations requested comments on the manner in which the proposed regulations require the reporting of information on taxes paid or accrued by U.S. MNE groups and their constituent entities on taxable income earned in the relevant accounting period. One comment requested that "total accrued tax expense" in proposed §1.6038-4(d)(2)(v) be revised to read "accrued current tax expense" in order to reflect only operations in the current year and not deferred taxes or provisions for uncertain tax liabilities. The proposed regulations clearly state that the relevant taxes to be reported relate only to the annual accounting period for which the CbCR is provided and exclude deferred taxes and provisions for uncertain tax liabilities. Therefore, the comment is not adopted.

The preamble to the proposed regulations also requested comments on whether the descriptions of any of the other items in §1.6038-4(d)(2)(i) through (ix) regarding tax jurisdiction of residence information should be further refined or whether additional guidance is needed with respect to how to determine any of these items. One comment requested that the definition for tangible assets be revised to clarify that intangibles and financial assets are excluded consistent with the Final BEPS Report. In response, the

final regulations expressly provide that tangible assets do not include intangibles or financial assets.

A comment noted that the term revenue excludes dividends from other constituent entities and recommended that this exclusion be extended to all forms of imputed earnings or deemed dividends. The Treasury Department and the IRS agree that imputed earnings and deemed dividends that are taken into account solely for tax purposes should be treated the same as dividends for purposes of the CbCR. Accordingly, the final regulations incorporate this recommendation.

Multiple comments recommended that the wording "total income tax paid on a cash basis to all jurisdictions" in proposed §1.6038-4(d)(2)(iv) should be modified to read "total income tax paid on a cash basis to each tax jurisdiction" to avoid misinterpretation of the "all tax jurisdictions" language to require taxes paid by entities that are tax residents of different tax jurisdictions to be aggregated rather than reported on a country-by-country basis as intended. The Treasury Department and the IRS interpret the language of the proposed regulation to require the total income tax paid on a cash basis to any tax jurisdiction by constituent entities that have a tax residence in a particular tax jurisdiction to be reported on an aggregated basis for that particular tax jurisdiction of residence but not the aggregation of taxes paid by constituent entities that have different tax residences. For instance, if a constituent entity pays income tax in its tax jurisdiction of residence on its earnings from operations in that country and is subject to withholding taxes on royalties received from licensees in another country, taxes paid with respect to the income and the taxes withheld with respect to the royalties should be reflected on an aggregated basis on the CbCR in the row for the

constituent entity's tax jurisdiction of residence. The Treasury Department and the IRS are concerned that the alternative language proposed in the comments could be misinterpreted to require amounts paid to different tax jurisdictions by constituent entities resident in a single tax jurisdiction to be reported on a disaggregated basis. Accordingly, this comment is not adopted.

Multiple comments also recommended the inclusion of two additional items, deferred taxes and provisions for uncertain tax positions, in the information required to be reported on a tax jurisdiction-by-tax jurisdiction basis. This recommendation has not been adopted in the final regulations because it would impose an additional reporting burden beyond the information described in the Final BEPS Report.

Multiple comments recommended that the final regulations clarify that the information listed in proposed §1.6038-4(d)(2)(i) through (ix) is reported in the aggregate for all constituent entities resident in each separate tax jurisdiction. Although the language in the proposed regulations does indicate that the information is to be provided with respect to each tax jurisdiction in which one or more constituent entities of the U.S. MNE group are resident and in the form and manner that Form 8975 prescribes, the final regulations provide additional language to clarify that the information is to be presented for each tax jurisdiction as an aggregate of the information for all constituent entities resident in that tax jurisdiction. Multiple comments requested that the final regulations clarify whether the information must be provided for only the constituent entities in each tax jurisdiction or whether the information must also be provided for U.S. MNE group members that are not constituent entities, for instance VIEs. The Treasury Department and the IRS have determined that additional language

is unnecessary because §1.6038-4(d)(1) of the proposed regulations expressly requires reporting of information only with respect to constituent entities of the U.S. MNE group.

The final regulations provide that, for a constituent entity that is an organization exempt from taxation under section 501(a) because it is an organization described in section 501(c), 501(d), or 401(a), a state college or university described in section 511(a)(2)(B), a plan described in section 403(b) or 457(b), an individual retirement plan or annuity as defined in section 7701(a)(37), a qualified tuition program described in section 529, a qualified ABLE program described in section 529A, or a Coverdell education savings account described in section 530, the term revenue includes only revenue that is included in unrelated business taxable income as defined in section 512.

7. Other Form or Information Modifications

Multiple comments recommended that additional information be included on the CbCR, such as identification of constituent entities as “pass-through” and a legal entity identifier for each constituent entity using a standard international system for identifying individual business entities. The final regulations do not adopt these recommendations because they would impose an additional reporting burden beyond the information described in the Final BEPS Report.

8. Voluntary Filing Before the Applicability Date

Other countries have adopted CbC reporting requirements for annual accounting periods beginning on or after January 1, 2016, that would require reporting of CbC information by constituent entities of MNE groups with an ultimate parent entity resident in a tax jurisdiction that does not have a CbC reporting requirement for the same annual accounting period. The proposed regulations generally require U.S. MNE groups to file

a CbCR for taxable years beginning on or after the date the final regulations are published. Consequently, U.S. MNE groups that use a calendar year as their taxable year generally will not be required to file a CbCR for their taxable year beginning January 1, 2016, and constituent entities of such U.S. MNE groups may be subject to CbC reporting requirements in foreign jurisdictions. Comments expressed concern about this possibility and recommended various approaches for dealing with this issue. Most comments requested that the IRS accept and exchange CbCRs voluntarily filed for taxable years beginning on or after January 1, 2016.

Consistent with the proposed regulations, the final regulations are not applicable for taxable years of ultimate parent entities beginning before [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**], the date of publication of the final regulations in the **Federal Register**. Specifically, the final regulations apply to reporting periods of ultimate parent entities of U.S. MNE groups that begin on or after the first day of a taxable year of the ultimate parent entity that begins on or after [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**]. The Treasury Department and the IRS intend to allow ultimate parent entities of U.S. MNE groups and U.S. business entities designated by a U.S. territory ultimate parent entity to file CbCRs for reporting periods that begin on or after January 1, 2016, but before the applicability date of the final regulations, under a procedure to be provided in separate, forthcoming guidance. The Treasury Department is working to ensure that foreign jurisdictions implementing CbC reporting requirements will not require constituent entities of U.S. MNE groups to file a CbC report with the foreign jurisdiction if the U.S. MNE group files a CbCR with the IRS

pursuant to this procedure and the CbCR is exchanged with such foreign jurisdiction pursuant to a competent authority arrangement.

9. Time and Manner of Filing

The proposed regulations provide that the CbCR for a taxable year must be filed with the ultimate parent entity's income tax return for the taxable year on or before the due date, including extensions, for filing that person's income tax return. Multiple comments requested that taxpayers be permitted to file a CbCR up to one year from the end of the ultimate parent entity's taxable year or annual accounting period to facilitate the taxpayer's ability to use statutory accounts or tax records of constituent entities to complete the CbCR. After considering the flexibility allowed for sources of information for completing the CbCR, the IRS information technology resources necessary to facilitate a filing separate from the income tax return, and the IRS's concern that CbCRs be linked to an income tax return, the Treasury Department and the IRS have not adopted this recommendation. However, the final regulations do provide that Form 8975 may prescribe an alternative time and manner for filing.

10. Employees

The proposed regulations provide that the CbCR must reflect the number of employees for each tax jurisdiction of residence of the U.S. MNE group. The proposed regulations also provide that independent contractors participating in the ordinary course of business of a constituent entity may be included in the number of full-time equivalent employees. Multiple comments asked for further clarification with respect to the determination of the number of full-time equivalent employees and the treatment of independent contractors, including some recommending that independent contractors

not be included as employees. The final regulations do not provide additional guidance with respect to the meaning of full-time equivalent employee or with respect to independent contractor situations and continue to allow for independent contractors that participate in the ordinary operating activities of a constituent entity to be included in the number of full-time equivalent employees. U.S. MNE groups may determine the number of employees of constituent entities on a full-time equivalent basis using any reasonable approach that is consistently applied. The Treasury Department and the IRS believe permitting this flexibility in determining the number of full-time equivalent employees of each constituent entity appropriately balances the burden of completing the CbCR with the anticipated benefits to tax administration and is consistent with the Final BEPS Report.

The proposed regulations specify that employees should be reflected on the CbCR in the tax jurisdictions in which the employees performed work for the U.S. MNE group. Comments indicated that this methodology is inconsistent with the Final BEPS Report, which provides that employees of a constituent entity should be reflected in the tax jurisdiction of residence of such constituent entity, and that determining the work location of employees would be burdensome for U.S. MNE groups and would present issues regarding certain employment situations with traveling employees. The comments recommended that the final regulations follow the approach of the Final BEPS Report. In response to these comments, the final regulations do not include the phrase “in the relevant tax jurisdiction” from proposed §1.6038-4(d)(2)(viii). Accordingly, under the final regulations, employees of a constituent entity are reflected in the tax jurisdiction of residence of such constituent entity.

A comment requested clarification about the tax jurisdiction in which employees of partnerships should be reflected on the CbCR. As discussed in section 5 of this preamble, a partnership may be considered a stateless entity. If the partnership creates a permanent establishment for itself or its partners, then the permanent establishment itself may be a constituent entity of the U.S. MNE group. Employees of the permanent establishment-constituent entity should be reflected in the tax jurisdiction of residence of the permanent establishment. Any other employees of the partnership should be reported on the stateless jurisdiction row under the tax jurisdiction of residence information portion of the CbCR.

11. Source of Data and Reconciliation

The proposed regulations provide that the amounts furnished in the CbCR should be furnished for the annual accounting period with respect to which the ultimate parent entity prepares its applicable financial statements ending with or within the ultimate parent entity's taxable year, or, if the ultimate parent entity does not prepare applicable financial statements, then the information may be based on the applicable financial statements of constituent entities for their accounting period that ends with or within the ultimate parent entity's taxable year. Multiple comments expressed concern that the description of the period covered by the CbCR in the proposed regulations may limit the flexibility of U.S. MNE groups to choose to use consolidated financial statements or separate accounting, regulatory, or tax records prepared for the constituent entities. To mitigate this concern, the final regulations remove the restrictions imposed by the proposed regulations with respect to providing information for the applicable accounting period of the ultimate parent entity or for the applicable accounting period of each

constituent entity. The final regulations provide that the reporting period covered by Form 8975 is the period of the ultimate parent entity's annual applicable financial statement that ends with or within the ultimate parent entity's taxable year, or, if the ultimate parent entity does not prepare an annual applicable financial statement, then the ultimate parent entity's taxable year. The final regulations do not limit the constituent entity information to applicable financial statements of the constituent entity but, rather, provide that the source of the tax jurisdiction of residence information on the CbCR must be based on applicable financial statements, books and records, regulatory financial statements, or records used for tax reporting or internal management control purposes for an annual period of each constituent entity ending with or within the reporting period.

The proposed regulations provide that the amounts provided in the CbCR should be based on applicable financial statements, books and records maintained with respect to the constituent entity, or records used for tax reporting purposes. The term "books and records" was intended to be broad enough to include all sources of information that the Final BEPS Report allows. In order to clarify this intent, the final regulations provide that the source of data may also include regulatory financial statements and records used for internal management control purposes.

The proposed regulations state that it is not necessary to have or maintain records that reconcile the amounts provided on the CbCR to the consolidated financial statements of the U.S. MNE group or to the tax returns filed in any particular tax jurisdiction or to make adjustments for differences in accounting principles applied from tax jurisdiction to tax jurisdiction. Multiple comments recommended that reconciliation

to tax accounts be required and that ultimate parent entities maintain records of the reconciliation, while other comments supported the approach in the proposed regulations, which does not require reconciliation. The Treasury Department and the IRS considered these comments, and, consistent with the proposed regulations, the final regulations do not require the ultimate parent entity to create and maintain records to reconcile the information reported in the CbCR to consolidated financial statements or to tax returns. This approach provides flexibility for U.S. MNE groups to use the available data for each constituent entity without imposing the potential burden of a need to reconcile information on the CbCR with accounts that may not even be finalized when the CbCR is compiled, and it is consistent with the Final BEPS Report. The affirmative statement in the final regulations that an ultimate parent entity is not required to create and maintain information to support a reconciliation does not, however, affect the requirement to maintain records to support the information provided in the CbCR.

12. Expanding Scope and Surrogate Parent Entity Filing

The proposed regulations generally require a U.S. business entity that is an ultimate parent entity of a U.S. MNE group to file a CbCR with respect to business entities that are or would be consolidated with the ultimate parent entity. A CbCR is not required for an MNE group that does not have a U.S. business entity as its ultimate parent entity. Multiple comments requested that reporting be required for any U.S. entity that exercises the "mind and management function" of an MNE group, the foreign parent entity of which is tax resident in a jurisdiction that does not require a report similar to the CbCR, despite the fact that the foreign entities of such MNE group are not controlled foreign corporations. This recommendation, which is not adopted, is beyond

the scope of the Final BEPS Report and could not be implemented under the authority provided in section 6038 to collect information on foreign business entities owned by U.S. persons.

One comment recommended that the final regulations allow a foreign-parented MNE group with a U.S. business entity to designate that U.S. business entity as a surrogate parent entity and allow that entity to file a CbCR with the IRS for purposes of satisfying the MNE group's country-by-country reporting obligations in other tax jurisdictions. In light of the IRS resources that would be required to adopt this recommendation, the final regulations do not permit surrogate parent entity filing in the United States by foreign corporations as a general matter. However, the final regulations provide that a U.S. territory ultimate parent entity may designate a U.S. business entity that it controls (as defined in section 6038(e)) to file on the U.S. territory ultimate parent entity's behalf the CbCR that the U.S. territory ultimate parent entity would be required to file if it were a U.S. business entity. A U.S. territory ultimate parent entity is a business entity organized in a U.S. territory or possession of the United States that controls (as defined in section 6038(e)) a U.S. business entity and that is not owned directly or indirectly by another business entity that consolidates the accounts of the U.S. territory ultimate parent entity with its accounts under GAAP in the other business entity's tax jurisdiction of residence, or would be so required if equity interests in the other business entity were traded on a public securities exchange in its tax jurisdiction of residence.

13. Tax Jurisdiction of Residence and Fiscal Autonomy

The proposed regulations provide rules for determining the tax jurisdiction of residence of a constituent entity. Under those rules, a business entity is considered a resident in a tax jurisdiction if, under the laws of that tax jurisdiction, the business entity is liable to tax therein based on place of management, place of organization, or another similar criterion. The proposed regulations further provide 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." Multiple comments requested that the final regulations clarify that this language in the proposed regulations is not intended to exclude the possibility of a country with a purely territorial tax regime being a tax jurisdiction of residence. The Treasury Department and the IRS did not intend for the proposed regulations to be interpreted to treat all entities in tax jurisdictions with territorial tax regimes as stateless entities. The language in question was intended to indicate that a business entity will not have a tax jurisdiction of residence in a jurisdiction solely by reason of being liable to tax in the jurisdiction on fixed, determinable, annual or periodical income from sources or capital situated in the jurisdiction. For greater clarity, the final regulations provide that "[a] business entity will not be considered a resident in a tax jurisdiction if the business entity is only liable to tax in such tax jurisdiction by reason of a tax imposed by reference to gross amounts of income without any reduction for expenses, provided such tax applies only with respect to income from sources in such tax jurisdiction or capital situated in such tax jurisdiction."

The proposed regulations provide that a tax jurisdiction is a country or a jurisdiction that is not a country but that has fiscal autonomy. Multiple comments

requested that the final regulations address the meaning of fiscal autonomy. In light of the need for consistency of CbC reporting requirements across tax jurisdictions, the Treasury Department and the IRS do not believe it would be helpful to provide a general definition of fiscal autonomy in the final regulations absent international consensus on the meaning of the term. However, the final regulations clarify that a U.S. territory or possession of the United States, defined as American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands, is considered to have fiscal autonomy for purposes of CbC reporting.

Under the proposed regulations, if a business entity is resident in more than one tax jurisdiction and there is no applicable income tax treaty, the business entity's tax jurisdiction of residence is the tax jurisdiction of the business entity's place of effective management determined in accordance with Article 4 of the OECD Model Tax Convention. One comment noted that the "effective place of management" test under the OECD Model Tax Convention can be uncertain and "subject to second guessing." The comment recommended that an alternative, bright-line tie-breaker rule be considered to address such situations. The determination of tax jurisdiction of residence in the proposed regulations is based on the Final BEPS Report, and the final regulations do not create a new tie-breaker rule but add that, in addition to the OECD Model Tax Convention, Form 8975 may provide guidance.

Although certain entities may not have a tax jurisdiction of residence, the Treasury Department and the IRS have determined that an entity regarded as a corporation should not be considered stateless merely because it is organized or managed in a jurisdiction that does not impose an income tax on corporations.

Accordingly, the final regulations provide that in the case of a tax jurisdiction that does not impose an income tax on corporations, a corporation that is organized or managed in that tax jurisdiction will be treated as resident in that tax jurisdiction, unless such corporation is treated as resident in another tax jurisdiction under another provision of the final regulations.

14. Reporting Threshold

The revenue threshold at or above which a U.S. MNE group is required to file the CbCR (reporting threshold) is expressed in United States dollars (USD) in proposed §1.6038-4(h). Foreign jurisdictions that are enacting CbC reporting requirements based on the Final BEPS Report may express the reporting threshold in a foreign currency. Multiple commenters expressed concern that U.S. MNE groups may be required to file a CbC report in a foreign country, even if the USD reporting threshold in §1.6038-4(h) is not exceeded, because the U.S. MNE group's revenues exceed the local law reporting threshold as expressed in the foreign currency. The comments recommended various approaches to address the possibility of a reporting threshold in the final regulations that is inconsistent with local law reporting thresholds. The reporting threshold of $850,000,000 in the proposed regulation was determined by reference to the USD equivalent of €750,000,000 on January 1, 2015, as provided in the Final BEPS Report. The Treasury Department and the IRS anticipate that other countries will acknowledge that it would be inconsistent with the Final BEPS Report for a country to require local filing by a constituent entity of a U.S. MNE group that has revenue of less than $850,000,000.

Multiple comments requested that the reporting threshold be reduced to the USD equivalent of €40,000,000 in order to subject a greater number of U.S. MNE groups to CbC reporting requirements. Because the reporting threshold in the proposed regulations is based on the Final BEPS Report, it is consistent with the agreed international standard with respect to CbC reporting. The Treasury Department and IRS weighed the potential benefit of obtaining CbC information on a larger number of U.S. MNE groups against the additional administrative burden that would be imposed on the IRS and the burden that would be imposed on U.S. MNE groups that would not otherwise be required to file the CbCR. Based on these considerations, the final regulations maintain the reporting threshold in the proposed regulations.

15. Confidentiality and Use of the CbCR

Multiple comments expressed concerns regarding the confidentiality of the CbCR. Some comments recommended public disclosure of CbCRs. These comments requested that the CbCR be treated as a Treasury report, referencing as an example the Treasury Department's Financial Crimes Enforcement Network Report of Foreign Bank and Financial Assets, rather than tax return information, so that the CbCR would not be subject to the confidentiality protections under section 6103. Other comments supported the decision to treat CbCR as return information.

The Treasury Department and the IRS have determined that the information provided on the CbCR is return information subject to the confidentiality protections of section 6103. This approach is consistent with the purpose of CbC reporting as well as the confidentiality standards reflected in the Final BEPS Report. CbC reporting was designed and established as part of an international effort to standardize transfer pricing

documentation. This standardized documentation is intended to provide an efficient and effective means for tax administrations to conduct high-level transfer pricing risk assessment. Accordingly, the Treasury Department and the IRS are collecting the CbCR under the authority of sections 6001, 6011, 6012, 6031, and 6038 to assist in the better enforcement of income tax laws. The CbCR is a return, and the information furnished to the Treasury Department and the IRS on the CbCR is return information subject to the confidentiality protections provided under section 6103. In addition, the Final BEPS Report provides that tax administrations should take all reasonable steps to ensure that there is no public disclosure of confidential information in CbC reports and that they be used for tax risk assessment purposes.

The preamble of the proposed regulations indicates that the information reported on the CbCR will be used for high-level transfer pricing risk identification and assessment, and that transfer pricing adjustments will not be made solely on the basis of a CbCR, but that the CbCR may be the basis for further inquiries into transfer pricing practices or other tax matters which may lead to adjustments. Some comments supported the limitations on use of the CbCR information, while other comments expressed concern that a prohibition on disclosure of the CbCR for non-tax law purposes is too restrictive. Consistent with the proposed regulations, the final regulations do not contain specific limitations on the use of CbCR information. However, consistent with the Final BEPS Report, the Treasury Department and the IRS intend to limit the use of the CbCR information and intend to incorporate this limitation into the competent authority arrangements pursuant to which CbCRs are exchanged.

One comment recommended that CbCR information not be provided to state or local jurisdictions and that a statement to that effect be provided in the final regulations. Under section 6103(d), return information may be provided to state agencies, but only for the purposes of, and only to the extent necessary in, the administration of such state's tax laws. The Treasury Department and the IRS believe the circumstances under which this standard would be met for the CbCR are rare, but the final regulations do not preclude the disclosure of CbCRs to state agencies, subject to the restrictions of section 6103 that apply to other returns and return information.

16. Exchange of Information with Foreign Jurisdictions

The United States intends to enter into competent authority arrangements for the automatic exchange of CbCRs with jurisdictions with which the United States has an income tax treaty or tax information exchange agreement. Multiple comments expressed concern that review of the confidentiality safeguards and framework of the other jurisdictions would prevent the Treasury Department and IRS from concluding such arrangements on a timely basis. Comments also requested that the Treasury Department and IRS publish a list of jurisdictions with which the United States exchanges CbCRs. The Treasury Department is committed to entering into bilateral competent authority arrangements with respect to CbCRs in a timely manner, taking into consideration the need for appropriate review of systems and confidentiality safeguards in the other jurisdictions. The Treasury Department and the IRS anticipate that information about the existence of competent authority arrangements for CbCRs will be made publicly available, but the manner in which such information would be made publicly available has not yet been determined.

A comment recommended that the final regulations provide a mechanism for reporting suspected violations of the limitations on the use of information by foreign jurisdictions. While the final regulations do not provide procedures for reporting suspected violations, the Treasury Department and the IRS are aware of the concern and intend to establish a procedure to report suspected violations of confidentiality and other misuses of CbCR information.

A comment requested that information transmitted under the competent authority arrangements include the "Additional Information" table in the model CbC report template provided in the Final BEPS Report. It is expected that such information will be collected on Form 8975 and transmitted; however, there may be limits to the amount of information that can be transmitted in any field. Such constraints, if any, will be noted in the Instructions to Form 8975.

17. Penalties

One comment requested that penalties with respect to the CbCR be waived for reports filed for the 2016 tax year and that the Treasury Department should advocate that other countries also waive penalties for the 2016 tax year. The final regulations apply to reporting periods of ultimate parent entities that begin on or after the first day of a taxable year of the ultimate parent entity that begins on or after publication of the final regulations in the **Federal Register**. U.S. MNE groups whose ultimate parent entity's taxable year begins before the applicability date will not have a CbCR filing requirement for their tax year beginning in 2016. The final regulations do not provide a specific waiver of penalties for U.S. MNE groups whose ultimate parent entity's taxable year

begins on or after the applicability date. The penalty rules under section 6038 generally apply, including reasonable cause relief for failure to file.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Accordingly, a regulatory flexibility analysis is not required. This certification is based on the fact that these regulations will only affect U.S. corporations, partnerships, and business trusts that have foreign operations with respect to a taxable year when the combined annual revenue of the business entities owned by the U.S. person meets or exceeds $850,000,000 for the previous reporting period. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Melinda E. Harvey of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

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Section 1.6038-4 also issued under 26 U.S.C. 6001, 6011, 6012, 6031, and 6038.

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Par. 2. Section 1.6038-4 is added to read as follows:

§1.6038-4 Information returns required of certain United States persons with respect to such person's U.S. multinational enterprise group.

(a) Requirement of return. Except as provided in paragraph (h) of this section, every ultimate parent entity of a U.S. multinational enterprise (MNE) group must make an annual return on Form 8975, *Country-by-Country Report*, setting forth the information described in paragraph (d) of this section, and any other information required by Form 8975, with respect to the reporting period described in paragraph (c) of this section.

(b) Definitions--(1) Ultimate parent entity of a U.S. MNE group. An ultimate parent entity of a U.S. MNE group is a U.S. business entity that:

(i) Owns directly or indirectly a sufficient interest in one or more other business entities, at least one of which is organized or tax resident in a tax jurisdiction other than the United States, such that the U.S. business entity is required to consolidate the accounts of the other business entities with its own accounts under U.S. generally accepted accounting principles, or would be so required if equity interests in the U.S. business entity were publicly traded on a U.S. securities exchange; and

(ii) Is not owned directly or indirectly by another business entity that consolidates the accounts of such U.S. business entity with its own accounts under generally accepted accounting principles in the other business entity's tax jurisdiction of residence, or would be so required if equity interests in the other business entity were traded on a public securities exchange in its tax jurisdiction of residence.

(2) Business entity. For purposes of this section, a business entity generally is any entity recognized for federal tax purposes that is not properly classified as a trust under §301.7701-4 of this chapter. However, any grantor trust within the meaning of section 671, all or a portion of which is owned by a person other an individual, is a business entity for purposes of this section. Additionally, the term business entity includes any entity with a single owner that may be disregarded as an entity separate from its owner under §301.7701-3 of this chapter and a permanent establishment, as defined in paragraph (b)(3) of this section, that prepares financial statements separate from those of its owner for financial reporting, regulatory, tax reporting, or internal management control purposes. A business entity does not include a decedent's estate or a bankruptcy estate described in section 1398.

(3) Permanent establishment. For purposes of this section, the term permanent establishment includes:

(i) A branch or business establishment of a constituent entity in a tax jurisdiction that is treated as a permanent establishment under an income tax convention to which that tax jurisdiction is a party;

(ii) A branch or business establishment of a constituent entity that is liable to tax in the tax jurisdiction in which it is located pursuant to the domestic law of such tax jurisdiction; or

(iii) A branch or business establishment of a constituent entity that is treated in the same manner for tax purposes as an entity separate from its owner by the owner's tax jurisdiction of residence.

(4) U.S. business entity. A U.S. business entity is a business entity that is organized or has its tax jurisdiction of residence in the United States. For purposes of this section, foreign insurance companies that elect to be treated as domestic corporations under section 953(d) are U.S. business entities that have their tax jurisdiction of residence in the United States.

(5) U.S. MNE group. A U.S. MNE group comprises the ultimate parent entity of a U.S. MNE group as defined in paragraph (b)(1) of this section and all of the business entities required to consolidate their accounts with the ultimate parent entity's accounts under U.S. generally accepted accounting principles, or that would be so required if equity interests in the ultimate parent entity were publicly traded on a U.S. securities exchange, regardless of whether any such business entities could be excluded from consolidation solely on size or materiality grounds.

(6) Constituent entity. With respect to a U.S. MNE group, a constituent entity is any separate business entity of such U.S. MNE group, except that the term constituent entity does not include a foreign corporation or foreign partnership for which the ultimate parent entity is not required to furnish information under section 6038(a) (determined without regard to §§1.6038-2(j) and 1.6038-3(c)) or any permanent establishment of such foreign corporation or foreign partnership.

(7) Tax jurisdiction. For purposes of this section, a tax jurisdiction is a country or a jurisdiction that is not a country but that has fiscal autonomy. For purposes of this section, a U.S. territory or possession of the United States is considered to have fiscal autonomy.

(8) Tax jurisdiction of residence. A business entity is considered a resident in a tax jurisdiction if, under the laws of that tax jurisdiction, the business entity is liable to tax therein based on place of management, place of organization, or another similar criterion. A business entity will not be considered a resident in a tax jurisdiction if the business entity is liable to tax in such tax jurisdiction only by reason of a tax imposed by reference to gross amounts of income without any reduction for expenses, provided such tax applies only with respect to income from sources in such tax jurisdiction or capital situated in such tax jurisdiction. If a business entity is resident in more than one tax jurisdiction, then the applicable income tax convention rules, if any, should be applied to determine the business entity's tax jurisdiction of residence. If a business entity is resident in more than one tax jurisdiction and no applicable income tax convention exists between those tax jurisdictions, or if the applicable income tax convention provides that the determination of residence is based on a determination by

the competent authorities of the relevant tax jurisdictions and no such determination has been made, the business entity's tax jurisdiction of residence is the tax jurisdiction of the business entity's place of effective management determined in accordance with Article 4 of the Organisation for Economic Co-operation and Development Model Tax Convention on Income and on Capital 2014, or as provided by Form 8975. A corporation that is organized or managed in a tax jurisdiction that does not impose an income tax on corporations will be treated as resident in that tax jurisdiction, unless such corporation is treated as resident in another tax jurisdiction under another provision of this section. The tax jurisdiction of residence of a permanent establishment is the jurisdiction in which the permanent establishment is located. If a business entity does not have a tax jurisdiction of residence, then solely for purposes of paragraph (b)(1) of this section, the tax jurisdiction of residence is the business entity's country of organization.

(9) Applicable financial statements. An applicable financial statement is a certified audited financial statement that is accompanied by a report of an independent certified public accountant or similarly qualified independent professional that is used for purposes of reporting to shareholders, partners, or similar persons; for purposes of reporting to creditors in connection with securing or maintaining financing; or for any other substantial non-tax purpose.

(10) U.S. territory or possession of the United States. The term U.S. territory or possession of the United States means American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands.

(11) U.S. territory ultimate parent entity. A U.S. territory ultimate parent entity is a business entity organized in a U.S. territory or possession of the United States that controls (as defined in section 6038(e)) a U.S. business entity and that is not owned directly or indirectly by another business entity that consolidates the accounts of the U.S. territory ultimate parent entity with its accounts under generally accepted accounting principles in the other business entity's tax jurisdiction of residence, or would be so required if equity interests in the other business entity were traded on a public securities exchange in its tax jurisdiction of residence.

(c) 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 52-53 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 52-53 week period described in section 441(f)) that ends on the last day of the ultimate parent entity's taxable year.

(d) Contents of return--(1) Constituent entity information. The return on Form 8975 must contain so much of the following information with respect to each constituent entity of the U.S. MNE group, and in such form or manner, as Form 8975 prescribes:

(i) The complete legal name of the constituent entity;

(ii) The tax jurisdiction, if any, in which the constituent entity is resident for tax purposes;

(iii) The tax jurisdiction in which the constituent entity is organized or incorporated (if different from the tax jurisdiction of residence);

(iv) 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

(v) The main business activity or activities of the constituent entity.

(2) Tax jurisdiction of residence information. The return on Form 8975 must contain so much of the following information 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, and in such form or manner, as Form 8975 prescribes:

(i) Revenues generated from transactions with other constituent entities;

(ii) Revenues not generated from transactions with other constituent entities;

(iii) Profit or loss before income tax;

(iv) Total income tax paid on a cash basis to all tax jurisdictions, and any taxes withheld on payments received by the constituent entities;

(v) 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;

(vi) Stated capital, except that the stated capital of a permanent establishment must be reported in the tax jurisdiction of residence of the legal entity of which it is a permanent establishment unless there is a defined capital requirement in the permanent establishment tax jurisdiction for regulatory purposes;

(vii) Total accumulated earnings, except that accumulated earnings of a permanent establishment must be reported by the legal entity of which it is a permanent establishment;

(viii) Total number of employees on a full-time equivalent basis; and

(ix) Net book value of tangible assets, which, for purposes of this section, does not include cash or cash equivalents, intangibles, or financial assets.

(3) Special rules--(i) Constituent entity with no tax jurisdiction of residence. The information listed in paragraph (d)(2) of this section also must be provided, in the aggregate, for any constituent entity or entities that have no tax jurisdiction of residence. In addition, if a constituent entity is an owner of a constituent entity that does not have a jurisdiction of tax residence, then the owner's share of such entity's revenues and profits will be aggregated with the information for the owner's tax jurisdiction of residence.

(ii) Definition of revenue. For purposes of this section, the term revenue includes all amounts of revenue, including revenue from sales of inventory and property, services, royalties, interest, and premiums. The term revenue does not include payments received from other constituent entities that are treated as dividends in the payor's tax jurisdiction of residence. Distributions and remittances from partnerships and other fiscally transparent entities and permanent establishments that are constituent entities are not considered revenue of the recipient-owner. The term revenue also does not include imputed earnings or deemed dividends received from other constituent entities that are taken into account solely for tax purposes and that otherwise would be included as revenue by a constituent entity. With respect to a constituent entity that is an organization exempt from taxation under section 501(a) because it is an organization described in section 501(c), 501(d), or 401(a), a state college or university described in section 511(a)(2)(B), a plan described in section 403(b) or 457(b), an individual retirement plan or annuity as defined in section

7701(a)(37), a qualified tuition program described in section 529, a qualified ABLE program described in section 529A, or a Coverdell education savings account described in section 530, the term revenue includes only revenue that is reflected in unrelated business taxable income as defined in section 512.

(iii) Number of employees. For purposes of this section, the number of employees on a full-time equivalent basis may be reported as of the end of the accounting period, on the basis of average employment levels for the annual accounting period, or on any other reasonable basis consistently applied across tax jurisdictions and from year to year. Independent contractors participating in the ordinary operating activities of a constituent entity may be reported as employees of such constituent entity. Reasonable rounding or approximation of the number of employees is permissible, provided that such rounding or approximation does not materially distort the relative distribution of employees across the various tax jurisdictions. Consistent approaches should be applied from year to year and across entities.

(iv) Income tax paid and accrued tax expense of permanent establishment. In the case of a constituent entity that is a permanent establishment, the amount of income tax paid and the amount of accrued tax expense referred to in paragraphs (d)(2)(iv) and (v) of this section should not include the income tax paid or tax expense accrued by the business entity of which the permanent establishment would be a part, but for the second sentence of paragraph (b)(2) of this section, in that business entity's tax jurisdiction of residence on the income derived by the permanent establishment.

(v) Certain transportation income. If a constituent entity of a U.S. MNE group derives income from international transportation or transportation in inland waterways

that is covered by income tax convention provisions that are specific to such income and under which the taxing rights on such income are allocated exclusively to one tax jurisdiction, then the U.S. MNE group should report the information required under paragraph (d)(2) of this section with respect to such income for the tax jurisdiction to which the relevant income tax convention provisions allocate these taxing rights.

(e) Reporting of financial amounts--(1) Reporting in U.S. dollars required. All amounts furnished under paragraph (d)(2) of this section, other than paragraph (d)(2)(viii) of this section, must be expressed in U.S. dollars. If an exchange rate is used other than in accordance with U.S. generally accepted accounting principles for conversion to U.S. dollars, the exchange rate must be indicated.

(2) Sources of financial amounts. All amounts furnished under paragraph (d)(2) of this section, other than paragraph (d)(2)(viii) of this section, should be based on applicable financial statements, books and records maintained with respect to the constituent entity, regulatory financial statements, or records used for tax reporting or internal management control purposes for an annual period of each constituent entity ending with or within the period described in paragraph (c) of this section.

(f) Time and manner for filing. Returns on Form 8975 required under paragraph (a) of this section 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.

(g) Maintenance of records. The U.S. person filing Form 8975 as an ultimate parent entity of a U.S. MNE group must maintain records to support the information

provided on Form 8975. However, the U.S. 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.

(h) Exceptions to furnishing information. An ultimate parent entity of a U.S. MNE group is not required to report information under this section for the reporting period described in paragraph (c) of this section if the annual revenue of the U.S. MNE group for the immediately preceding reporting period was less than $850,000,000.

(i) [Reserved]

(j) U.S. territories and possessions of the United States. A U.S. territory ultimate parent entity may designate a U.S. business entity that it controls (as defined in section 6038(e)) to file Form 8975 on the U.S. territory ultimate parent entity's behalf with respect to such U.S. territory ultimate parent entity and the business entities that would be required to consolidate their accounts with such U.S. territory ultimate parent entity under U.S. generally accepted accounting principles, or would be so required if equity interests in the U.S. territory ultimate parent entity were publicly traded on a U.S. securities exchange.

(k) Applicability dates. The rules of this section apply to reporting periods of ultimate parent entities of U.S. MNE groups that begin on or after the first day of a taxable year of the ultimate parent entity that begins on or after [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: June 20, 2016.

Mark J. Mazur.

Assistant Secretary of the Treasury (Tax Policy).

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