



IRS releases guidance on voluntary filing of CbC report for early reporting periods

Global Transfer Pricing Alert 2017-001

The Internal Revenue Service on January 19 released Revenue Procedure 2017-23 (Rev. Proc. 2017-23) which provides that ultimate parent entities of US multinational enterprise (MNE) groups may file a Form 8975, Country-by-Country Report, and accompanying Schedule A, Tax Jurisdiction and Constituent Entity Information for reporting periods that: (i) are earlier than the applicability date of Treas. Reg. §1.6038-4; and (ii) begin on or after January 1, 2016 (early reporting periods).¹ The revenue procedure, which will be published in I.R.B. 2017-07, dated February 13, 2017, discusses the timing and manner of these early filings.²

Rev. Proc. 2017-23 elaborates on the guidance set forth in the final country-by-country regulations,³ the preamble to which indicated that the US Treasury Department and the IRS would provide a procedure for ultimate parent entities of US MNE groups to file a Form 8975 for early reporting periods, so that constituent entities would be able to meet the filing requirements of jurisdictions that have adopted CbC reporting for annual accounting periods beginning on or after January 1, 2016.

Filing Procedures

¹ The applicability date of Treas. Reg. §1.6038-4 is June 30, 2016. See Treas. Reg. §1.6038-4(k).

² Draft versions of Form 8975 and associated Schedule A may be found at: https://apps.irs.gov/app/picklist/list/draftTaxForms.html;jsessionid=GFDfcwtqEejm2GJuSSs-Ng_?value=8975&criteria=formNumber&submitSearch=Find. To date, draft instructions for Form 8975 have not been issued.

³ T.D. 8773, 81 Fed. Reg. 42483-42491 (June 30, 2016) (CbC reporting regulations).

To file a Form 8975 for early reporting periods, Rev. Proc. 2017-23 provides as follows:

- **General Rule:** Beginning on September 1, 2017, Form 8975 may be filed for an early reporting period with the income tax return (or other return as will be provided in the Instructions to Form 8975) for the taxable year of the ultimate parent entity of the US MNE group within which the early reporting period ends. For example, if the ultimate parent entity is on a calendar year, and if the early reporting period ends on December 31, 2016, then Form 8975 may be filed with the ultimate parent entity's income tax return for the 2016 taxable year.
- **Requirement to Amend Returns That Lack a Form 8975:** Ultimate parent entities that file (or have filed) an income tax return for a taxable year that includes an early reporting period but that do not include a Form 8975 must follow the procedures for filing an amended income tax return and attach Form 8975 to the amended return within 12 months of the close of the taxable year that includes the early reporting period. Filing an amended income tax return solely to attach Form 8975 in accordance with this revenue procedure will have no effect on the statute of limitations for the income tax return.
- **Encouragement to File Electronically:** To ensure timely automatic exchange of the information on a Form 8975 for an early reporting period, ultimate parent entities that are able to file their returns electronically are encouraged to file their returns and Forms 8975 electronically. An ultimate parent entity that files its return electronically must file Form 8975 through the IRS Modernized e-File system in Extensible Markup Language (XML) format, not as a binary attachment (such as a PDF file). The IRS intends to provide specific electronic filing information on Form 8975 to the software industry in early 2017 so that developers will be able to make Form 8975 available in their software ahead of the September 1, 2017, implementation date.⁴
- **Paper Filing:** For filers of Form 8975 that are not eligible to use Modernized e-File to file their income tax return, a paper version of Form 8975 will be made available in advance of the September 1, 2017, implementation date.

Applicability Date

Rev. Proc. 2017-23 applies to reporting periods of ultimate parent entities of US MNE groups beginning on or after January 1, 2016, and before the applicability date of Treas. Reg. §1.6038-4, which, as noted above, is June 30, 2016.

Observations

⁴ For the OECD's CbC Reporting User Guide and accompanying XML Schema, see OECD BEPS Action 13 – Country-by-Country Reporting XML Schema: User Guide for Tax Administrations and Taxpayers (March 2016), along with the accompanying ZIP file at <http://www.oecd.org/tax/exchange-of-tax-information/country-by-country-reporting-xml-schema-user-guide-for-tax-administrations-and-taxpayers.htm>. We anticipate that the version issued by the IRS and US Treasury Department will be substantially similar.

Because of Rev. Proc. 2017-23's permissive rule for amending a taxpayer's income tax return, the IRS has effectively extended the deadline for Form 8975 from September 15, 2017, to December 31, 2017, for calendar year taxpayers, at least for the first early reporting period.

This rule is different from the requirement that generally applies under the final CbC reporting regulations, the preamble to which explicitly stated that: (i) comments had been submitted requesting that taxpayers be permitted to file Form 8975 up to one year from the end of the ultimate parent entity's taxable year; but that (ii) the IRS and US Treasury Department explicitly chose not to adopt this recommendation and required that Form 8975 be filed with the ultimate parent entity's tax return instead.⁵ At the same time, this rule is consistent with the recommendation in Action 13 of the OECD's final BEPS report.⁶ It is also consistent with the last sentence in the above-referenced section of the preamble to the final CbC reporting regulations, which states that Form 8975 may prescribe an alternative time and manner for filing than the regulations themselves.⁷

We will continue to monitor these and other CbC issues as further developments unfold.

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Resources

- [2016 Global Transfer Pricing Country Guide](#)
- [Arm's length standard](#)

⁵ T.D. 9773, Summary of Comments and Explanation of Revisions, section 9 - Time and Manner of Filing.

⁶ See BEPS Action 13: 2015 Final Report, *Transfer Pricing Documentation and Country-by-Country Reporting*, ¶ 31 (saying that the date for completion of the CbC Report may be extended to one year following the last day of the fiscal year of the UPE, given that the final financial statements and other information which may be relevant for CbC data may not be finalized until after the due date for the tax returns in some countries for any particular fiscal year).

⁷ T.D. 9773, Summary of Comments and Explanation of Revisions, section 9 - Time and Manner of Filing.

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