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The U.S. Country-by-Country Reporting Regulations: A Synopsis

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Of all the guidance released under the OECD/G20's Action Plan on Base Erosion and Profit Shifting ("BEPS"), country-by-country ("CbC") reporting has undeniably been the project's most palpable short-term achievement. Since the OECD's publication of the final BEPS reform package on October 5, 2015,[1] more than 25 countries have either promulgated or announced their intention to implement country-by-country reporting,[2] and 44 countries have become signatories to the Multilateral Competent Authority Agreement ("MCAA") on the exchange of CbC reports.[3] Implementation of CbC reporting in the United States has moved apace with these developments, with the U.S. Treasury Department ("Treasury") and the Internal Revenue Service ("IRS") issuing final CbC reporting regulations on June 30, 2016.[4] This article contextualizes and provides a distilled analysis of the fundamental provisions of the U.S. CbC reporting regulations; examines the critical response to the regulations and to the BEPS project's CbC reporting guidance more generally; and grapples with the $850-million dollar question underlying the CbC reporting rules: can we, in fact, expect CbC reporting to become public?

1. The Advent of BEPS: Setting the Context to the CbC Regulations

The BEPS project was conceived out of mounting concerns surrounding multinationals' exploitation of mismatches between tax regimes across jurisdictions to artificially shift profits to low or no-tax locations where there is little or no activity, resulting in tax base erosion and, in many cases, double non-taxation of income.[5] A June 2012 meeting of G20 leaders in Los Cabos, during which the G20 leaders' communiqué vocalized "the need to prevent base erosion and profit shifting," and called on the OECD to conduct a study on the parameters of the issue,[6] laid the foundation for the BEPS undertaking. Less than one year later, on February 13, 2013, the OECD released the first BEPS report, which identified the root causes of BEPS but refrained from prescribing specific guidance.[7] Guidance came soon enough, when the OECD adopted a 15-point Action Plan[8] to tackle

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BEPS concerns on July 20, 2013—an effort which, the OECD Secretary-General optimistically announced, "will result in the most fundamental change to the international tax rules since the 1920s[.]"[9] From that point forward, a variety of stakeholders, including the OECD, the European Commission, the G20 countries, non-governmental and civil society organizations, and more than 60 developing countries have joined forces to produce the interim BEPS outputs in 2014 and the final action plans in October 2015.

The CbC reporting requirement is part of the OECD's Action 13, *Transfer Pricing Documentation and Country-by-Country Reporting*, which aims to utilize international tax transparency rather than substantive tax law reforms to understand, control, and tackle BEPS behaviors by means of a three-tiered approach consisting of CbC reporting, a master file and a local file.[10] Indeed, the OECD's work to develop a CbC reporting template represents a definitive trend in the past decade toward disclosure and transparency across sectors in the wake of concerns about corporate accounting abuses and aggressive tax avoidance—a trend visible in the Extractive Industries Transparency Initiative, the United States' Dodd-Frank Act, and the EU's Accounting and Capital Requirements IV directives.[11] The CbC reporting requirements respond to a mandate from the June 2013 G8 Lough Erne leaders' communiqué "to develop a common template for country-by-country reporting to tax authorities by major multinational enterprises."[12] "The information would be of greatest use to tax authorities, including those of developing countries," according to the communiqué, "if it were presented in a standardized format focusing on high level information on the global allocation of profits and taxes paid."[13] Action 13 has expanded on that mandate in several ways: first, by increasing the data points required to be reported by each constituent entity of the MNE group beyond merely profits and taxes paid, and second, by specifying that the CbC reports are to serve as a tool for tax administrations to perform high-level transfer pricing risk assessments.[14]

In the United States Treasury, the idea of CbC reporting was greeted by general agreement, with Robert Stack, the Deputy Assistant Secretary for International Tax Affairs, emphasizing its value in providing tax administrations with "a global picture of where profits, tax, and economic activities of multinational enterprises are reported, and the ability to use this information to assess various tax compliance risks, so they can focus audit resources where they will be most effective."[15] Predictably, CbC reporting has faced resistance from Congressional Republicans, trade associations, and industry groups, who have voiced concerns that it would be prohibitively costly and burdensome to implement, and would result in public disclosure of companies' tax payments and other "sensitive" data. In a June 9, 2015 letter to Treasury Secretary Jacob Lew, Senate Finance Committee Chairman Orrin Hatch (R-Utah) and House Ways and Means Committee Chairman Paul Ryan (R-Wisconsin) expressed "concern[s] about country-by-country (CbC) reporting standards that will contain sensitive information related to a U.S. multinational's group operations."[16] The Congressmen found IRS's authority to request, collect, and share CbC reports with foreign governments "questionable," and the benefits to the U.S. government from agreeing to these reporting requirements "unclear."[17] They called upon Treasury to identify how the CbC reporting obtained by the IRS with respect to foreign multinationals operating in the United States would be utilized, and to provide a legal basis for giving foreign governments the power to collect sensitive information directly from MNEs in a "master file."[18] The Congressmen's follow-up letter to Secretary Lew on August 27, 2015 reiterated those concerns, stating, "we are not convinced that Treasury has the authority to require CbC reporting by certain companies (including sharing the information with foreign governments). In addition, the benefit to the U.S. government, businesses, and workers from providing sensitive information in the CbC reports (and, just as importantly, the master file document) is unclear, at best."[19]

A Senate Finance Committee hearing on December 1, 2015, examining the OECD's final BEPS action, was punctuated by themes of costliness and confidentiality, with Senator Hatch remarking that the BEPS reporting requirements "could impose significant compliance costs on American businesses and force them to share highly sensitive proprietary information with foreign governments."[20] However, the testimony of Dorothy Coleman, Vice President of Tax and Domestic Economic Policy at the National Association of Manufacturers revealed that industry groups' and trade associations' concerns had more to do with the master and local files, which, in addition to requiring a deeper level of reporting, would be collected not via information exchange but directly by each jurisdiction in which a multinational does business, thus without the protections afforded by

treaty-based information-sharing networks.[21] Given the reality that a decision on the part of the United States to abstain from adopting the BEPS CbC reporting rules would leave U.S. multinationals at the mercy of other implementing jurisdictions, which could require subsidiaries of U.S. MNE groups to produce CbC reports under local rules, it is little wonder that Treasury and the IRS ultimately decided to issue the CbC reporting regulations while eschewing master and local file reporting. In fact, the preamble to the final U.S. CbC reporting regulations makes precisely this point—that failure to adopt CbC reporting in the United States would beget greater compliance costs and disclosure risks for U.S. MNE groups, which would nonetheless be subject to CbC filing obligations in the countries in which they do business.

2. The U.S. CbC Regulations: Fundamental Provisions

On December 23, 2015, Treasury and the IRS issued proposed regulations (REG-109822-15) that would require U.S.-parented MNE groups to file annual country-by-country reports on December 23, 2015,[22] and the regulations as amended and finalized allow for filings beginning on June 30, 2016.[23] The final regulations closely track the requirements of the BEPS Final Report on Action 13 and retain the basic framework of the proposed regulations. According to the final regulations, the ultimate parent entity of a U.S. MNE group with at least $850 million of consolidated group revenue for the preceding annual accounting period (roughly the equivalent value of the €750 million filing threshold established by Action 13)[24] must now file Form 8975, the "Country-by-Country Report," together with its timely filed annual tax return.[25] The regulations define a U.S. "ultimate parent entity" as a "business entity" (that is, a person under IRC § 7701 that is not an individual, including a disregarded entity or a permanent establishment) that "owns a sufficient interest in one or more other business entities, at least one of which is organized or tax resident outside of the United States, such that the business entity is required to consolidate the accounts for financial reporting purposes under U.S. GAAP, or would be so required if equity interests in the U.S. business entity were publicly traded on a U.S. securities exchange."[26] What makes a business entity "U.S." is being organized or having its tax jurisdiction of residence in the United States.[27] The regulations excuse decedents' estates, individuals' bankruptcy estates, and grantor trusts within the meaning of § 671 of the Internal Revenue Code ("IRC") from the filing requirement, provided that the owners of such entities are individuals.[28] Also excluded are foreign entities paying tax on fixed or determinable annual or periodic income (that is, certain U.S. source income not effectively connected with a U.S. trade or business).[29] Foreign insurance companies that elect to be treated as domestic corporations under IRC § 953(d), on the other hand, are classified as U.S. business entities that have their tax jurisdiction of residence in the United States. Disregarded entities and permanent establishments are expressly required by the regulations to prepare CbC reports.[30] The expansive definition of "U.S. business entity" undoubtedly anticipates that foreign countries will require CbC information for disregarded entities and permanent establishments. The regulations define the term permanent establishment as including:

> (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.[31]

This definition incorporates language reflecting the new OECD guidance on PEs contained in the BEPS Final Report on Action 7, *Preventing the Artificial Avoidance of Permanent Establishment Status*. Thus, U.S. taxpayers may assess whether a PE exists under the applicable U.S. law or treaties, without the need to make a separate determination under the OECD Model Tax Convention, which is set for a revision that will, among other things, incorporate Action 7's proposed changes to the definition of PE.

The regulations require the ultimate U.S. parent to provide specified "constituent entity information" and "tax jurisdiction of residence information" for each "constituent entity"—that is, any separate business entity in the U.S. MNE group.[32] Omitted from the definition of "constituent entity," however, is any foreign corporation or partnership for which the ultimate parent entity is not required to furnish information pursuant to the existing U.S. transfer pricing information reporting requirements under IRC § 6038(a), or any PE of the foreign corporation

or partnership.[33] Since the regulations require U.S. MNE groups to structure their reporting according to the jurisdiction in which constituent entities are resident, the term tax jurisdiction of residence is key not only in identifying whether the ultimate parent entity of an MNE group is "U.S." and subject to U.S. CbC reporting in the first place but also for purposes of assembling the U.S. MNE group's blueprint of global activities on the Form 8975. A business entity is generally considered resident in a tax jurisdiction if it is liable to tax under the laws of that jurisdiction by reason of its place of management or organization, or on the basis of any other criterion of a similar nature.[34] However, if a business entity is resident in more than one jurisdiction, the regulations provide a series of rules, instructing the business entity to turn to the applicable income tax convention rules first; then, if no income tax convention exists or if the convention points to a determination made by the competent authorities of the tax jurisdictions in question and no such determination has been made, to the business entity's "place of effective management" under Article 4 of the OECD Model Tax Convention.[35] For purposes of the regulations only, a PE will be considered resident in the tax jurisdiction where it is located, and the tax jurisdiction of residence of a business entity with no otherwise determinable tax jurisdiction of residence will be its country of organization.[36]

The final regulations refine the proposed regulations' rule on partnerships, which provides that a business entity treated as a partnership in the tax jurisdiction in which it was organized and that did not own or create a PE in any jurisdiction would have no tax jurisdiction of residence, or in other words, be a stateless entity. The regulations clarify that information on the tax jurisdiction of residence for stateless entities shall be furnished 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 to be included in the information for the tax jurisdiction of residence of the owner.[37] Thus, 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. Accordingly, a reverse hybrid entity treated as a partnership in a foreign jurisdiction and as a corporation in the United States, where its owner resides, would report its profits and taxes paid on both the stateless income row (for the foreign jurisdiction income) and the U.S. row (for the U.S. partner's share of such income). Presumably, if a taxpayer has another partnership or fiscally transparent entity above the partnership or reverse hybrid, the taxpayer would be required to report that owner's share as stateless too, and so on, until the taxpayer arrives at a stateless entity-owner in the chain of companies that does not itself fall into the stateless income category.[38]

As noted in the Preamble to the proposed regulations, the Form 8975, which the IRS has yet to release, will require the same categories of information described in the model template released by the OECD in the Final Report on Action 13.[39] Moreover, MNE groups are given flexibility in determining how to compile the required information. According to the regulations, this information may be derived from 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 purposes.[40] For each constituent entity of the U.S. MNE group, the ultimate U.S. parent entity must furnish on Form 8975 the constituent entity's complete legal name,[41] tax jurisdiction of residence,[42] place of organization or incorporation (if different from its tax jurisdiction of residence),[43] tax identification number,[44] and main business activities.[45] The parent must then provide the following "tax jurisdiction of residence" information in the aggregate for each tax jurisdiction in which the parent has constituent entities (and in the aggregate for all stateless constituent entities):[46]

(i) Revenues generated from transactions with other constituent entities of the U.S. MNE group;
(ii) Revenues not generated from transactions with other constituent entities of the U.S. MNE group;
(iii) Profit or loss before income tax;
(iv) Total income tax paid on a cash basis to all tax jurisdictions, including 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 PE must be reported in the tax jurisdiction of residence of the legal entity of which it is a PE, unless there is a defined capital requirement in the PE tax jurisdiction for regulatory purposes;
(vii) Total accumulated earnings, except that the accumulated earnings of a PE must be

reported in the tax jurisdiction of residence of the legal entity of which it is a PE;

(viii) Total number of employees on a full-time equivalent basis, to be reflected in the tax jurisdiction of residence of the constituent entity employer for which they work;[47] and

(ix) Net book value of tangible assets, excluding cash or cash equivalents, intangibles or financial assets.

The regulations state that the term revenue is inclusive of "all amounts of revenue, including revenue from sales of inventory and property, services, royalties, interest, and premiums" but exclusive of "payments received from other constituent entities which are treated as dividends in the payor's tax jurisdiction of residence."[48] Distributions from a partnership to its partners are likewise excluded from the partner's revenue to be reported on the Form 8975, as are imputed earnings and deemed dividends taken into account solely for tax purposes.[49] In addition, certain organizations that are exempt from taxation, including entities exempt by reason of IRC §§ 501(a) and (c), state colleges and universities, individual retirement plans or annuities, and qualified tuition programs, are required to report as revenue only unrelated business taxable income (that is, income regularly carried on as a trade or business that is not substantially related to furthering the exempt purpose of the organization).[50]

Under the regulations, 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, the ultimate parent entity's tax year.[51] The CbC reporting requirement applies to reporting periods of ultimate parent entities that begin on or after the first day of the ultimate parent entity's tax year that begins on or after June 30, 2016.[52] This rule differs from the guidance in Final Action 13, which proposes that CbC reporting apply to fiscal years beginning on or after January 1, 2016. U.S. trade associations and industry groups have been outspoken about the adverse consequences that that this delay in applicability may create for constituent entities of U.S. MNE groups with fiscal years beginning January 1, 2016 through June 30, 2016, subjecting these entities to secondary CbC reporting requirements in foreign jurisdictions.[53] To address this transition-year issue, Treasury and the IRS have announced their intention to allow the ultimate parent to make a voluntary filing of the CbC Report on the basis of a procedure to be defined in forthcoming guidance.[54] The OECD, in recommendations published on the day of the United States' release of its final regulations, has explicitly blessed such voluntary filing for U.S. MNE groups, deeming it "parent surrogate filing."[55] However, unlike the Final Action 13, which allows an MNE group to designate a "surrogate parent entity" as the substitute entity to file on the group's behalf in its applicable jurisdiction, the United States has refused to adopt this "surrogate parent" rule. As a small concession, the U.S. CbC reporting regulations do provide that an ultimate parent entity organized in a U.S. territory or possession may designate a U.S. constituent entity that it controls within the meaning of IRC § 6038(e) to file a CbC report on its behalf.[56]

3. Data Use and Disclosure in the Age of BEPS: Concluding Remarks

Treasury and the IRS have specified that the CbC reports will be utilized to aid the IRS in performing high-level transfer pricing risk, identification, and assessment.[57] Echoing Action 13, the Preamble to the regulations assures corporate taxpayers that CbC reports will neither serve to conclusively establish whether transfer pricing practices are at arm's length nor substitute for a comprehensive transfer pricing analysis; in other words, the IRS will not make transfer pricing adjustments solely on the basis of the reports.[58] Whether the CbC reports will effectively function as a pathway to accurate risk assessment remains to be seen, however. Experts have raised concerns that the OECD's CbC and master file reporting proposals do not achieve the hoped-for simplification of transfer pricing information; rather, they are merely a "different way of organizing the same burdensome level of documentation."[59] An instance in U.S. tax history indicates that more documentation is not necessarily better than less. In January 2010, the IRS announced that it would require all business taxpayers with total assets in excess of $10 million to report uncertain tax positions on their tax returns.[60] Shortly thereafter, the U.S. administration indicated that the data was effectively useless (although the requirements remain).[61] It may very well be that an acute level of segmentation from all MNEs—whether compliant or non-compliant—would overwhelm and ultimately impede effective tax administration.

This raises the $850 million-dollar question: how likely is country-by-country reporting to lead to mass public disclosure of company information,

and would public disclosure on a global scale be beneficial? The regulations provide that the CbC report will be treated as confidential tax return information in accordance with IRC § 6103.[62] Treasury and the IRS have also sought to allay fears of disclosure by assuring U.S. MNE groups that they will negotiate competent authority agreements that will provide for exchange of the CbC reports solely with other tax administrations that have entered into an income tax convention or a tax information exchange agreement with the United States.[63] Before entering into these competent authority arrangements, Treasury and the IRS will ensure that the "tax jurisdiction has the necessary legal safeguards in place to protect exchanged information, such protections are enforced, and adequate penalties apply to any breach of that confidentiality."[64] Moreover, the United States will pause automatic exchange of CbC reports with a jurisdiction if that jurisdiction is found to be noncompliant with data and confidentiality requirements, although precisely how the United States will ensure that it reacts on a timely basis remains unclear.

At a public hearing on the proposed regulations on May 13, 2016, a host of civil society groups and non-governmental organizations spoke about the need for the CbC reports to be publicly available information. Joseph Kraus from the One Campaign emphasized that "public disclosure of tax information is critical for enabling citizens to follow the money and ensure that taxes are collected and spent appropriately" and Heather Lowe from Global Financial Integrity characterized CbC reporting as "ha[ving] the potential to be a game-changing measure in the fight against profit-shifting by multinational companies" if made public.[65] Treasury and the IRS have not heeded these calls thus far. Aside from avoiding a violation of law (confidentiality of tax return information), the IRS's decision not to publicly disclose was presumably responsive to MNEs' vociferous concerns about protecting sensitive data. From a practical standpoint, it may be the case that instead of enlightening the public, disclosure of CbC reports would serve as a source of confusion. As former Treasury Secretary Paul O'Neill remarked in response to Senator Charles Grassley's proposal in the wake of the financial crash to make corporate tax returns public, disclosure "would subject corporations to misinformed, inexpert analysis of their finances and operating practices."[66] Holding corporations accountable is certainly a noble goal, and mandatory public disclosure is no doubt an empowering tool, but the conclusion that more disclosure is always better may not follow.

All argument aside, public disclosure of CbC reports could well be inevitable. On April 12, 2016, the European Commission released a proposal for a directive which, if approved by the European Parliament and Council of Ministers, will require public country-by-country reporting by EU-headquartered MNE groups as well as EU subsidiaries and branches with non-EU headquarters, provided the MNE groups have above €750 million in consolidated turnover.[67] This proposal, less far-reaching than Action 13 in terms of the data points to be reported, nevertheless represents a giant leap on the path towards mass public disclosure by multinationals. Whether such public disclosure will be useful in combating BEPS, only time will tell.

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1. OECD. "OECD presents outputs of OECD/G20 BEPS Project for discussion at G20 Finance Ministers meeting." Available at <http://www.oecd.org/tax/oecd-presents-outputs-of-oecd-g20-beps-project-for-discussion-at-g20-finance-ministers-meeting.htm>.
2. *See* Mindy Herzfeld. "New Analysis: Will Tax and Financial Reporting Converge?" April 12, 2016. *Tax Notes*. Available at <http://www.taxnotes.com/beps-expert/financial-reporting/news-analysis-will-tax-and-financial-reporting-converge/2016/04/12/18454961>.
3. Note that the number of signatories to the MCAA is reported as of June 30, 2016, the latest date for which data is available. *See* "Signatories of the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports." Available at <https://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/CbC-MCAA-Signatories.pdf>.
4. "Country-by-Country Reporting: Final Regulations," 81 Fed. Reg. 42,482 (June 30, 2016), pp. 42482 -42491. Available at <https://www.gpo.gov/fdsys/pkg/FR-2016-06-30/pdf/2016-15482.pdf>.
5. OECD. "About BEPS and the inclusive framework." Available at <http://www.oecd.org/tax/beps/beps-about.htm#background>.
6. "G20 Leaders Declaration." Available at <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/131069.pdf>.

7. OECD (2013), *Addressing Base Erosion and Profit Shifting*, OECD Publishing. Available at <http://dx.doi.org/10.1787/9789264192744-en>.
8. OECD (2013), *Action Plan on Base Erosion and Profit Shifting*, OECD Publishing. Available at <http://www.oecd.org/ctp/BEPSActionPlan.pdf>.
9. OECD. "Closing the tax gap." *Remarks by Angel Gurría, Secretary-General of the OECD, G20/OECD Action Plan on Base Erosion and Profit Shifting (BEPS).* Moscow, 20 July 2013. Available at <http://www.oecd.org/about/secretary-general/closing-the-tax-gap.htm>.
10. OECD (2015), *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report*, OECD Publishing, Paris, at p. 9. DOI: <http://dx.doi.org/10.1787/9789264241480-en>.
11. *See* Ernst & Young, *A new mountain to climb: tax reputation risk, growing transparency demands and the importance of data readiness.* 2015, p. 5. Available at <http://www.ey.com/Publication/vwLUAssets/ey-managing-tax-transparency-and-reputation-risk/$FILE/ey-managing-tax-transparency-and-reputation-risk.pdf>.
12. "2013 Lough Erne G8 Leaders' Communiqué." Available at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207771/Lough_Erne_2013_G8_Leaders_Communique.pdf>.
13. *Id.*
14. David Ernick, "Will Public Disclosure of Country-by-Country Reporting Data Become Mandatory?" June 8, 2015. *Bloomberg BNA*. Available at <http://www.bna.com/public-disclosure-countrybycountry-n17179927428/>.
15. Testimony of Robert B. Stack, Deputy Assistant Secretary (International Tax Affairs) U.S. Department of the Treasury Before the Senate Finance Committee, December 1, 2015. Available at <http://www.finance.senate.gov/imo/media/doc/01dec2015Stack.pdf>.
16. Orrin G. Hatch and Paul D. Ryan, "Letter to the Honorable Jacob Lew." June 9, 2015. Available at <http://www.finance.senate.gov/newsroom/chairman/release/?id=ff0b1d06-c227-44be-8d5a-5f998771188b≥.
17. *Id.*
18. *Id.*
19. Orrin G. Hatch and Paul D. Ryan, "Letter to the Honorable Jacob Lew." August 27, 2015. Available at <http://waysandmeans.house.gov/wp-content/uploads/2015/08/Letter-to-Secretary-Lew-on-BEPS.pdf>.
20. "Hatch Statement at Finance Hearing on OECD BEPS Reports," December 1, 2015. Available at <http://www.finance.senate.gov/imo/media/doc/12.1.15%20RELEASE%20Hatch%20Statement%20at%20Finance%20Hearing%20on%20OECD%20BEPS%20Reports.pdf>.
21. Statement for the Record of Dorothy Coleman Vice President, Tax and Domestic Economic Policy, National Association of Manufacturers, For the Hearing of the Senate Finance Committee on "International Tax: OECD BEPS & EU State Aid," December 1, 2015. Available at <http://www.finance.senate.gov/imo/media/doc/01dec2015Coleman.pdf>.
22. "Country-by-Country Reporting: Notice of Proposed Rulemaking," 80 Fed. Reg. 79,795 (December 23, 2015), pp. 79795 -79803. Available at <https://www.federalregister.gov/articles/2015/12/23/2015-32145/country-by-country-reporting>.
23. "Country-by-Country Reporting: Final Regulations," 81 Fed. Reg. 42,482 (June 30, 2016), pp. 42482 -42491. Available at <https://www.gpo.gov/fdsys/pkg/FR-2016-06-30/pdf/2016-15482.pdf>.
24. All amounts furnished on the Form 8975 must be expressed in U.S. dollars. If an exchange rate is used other than in accordance with U.S. GAAP for conversion to U.S. dollars, the exchange rate must be indicated. Treas. Reg. § 1.6038-4(e).
25. Treas. Reg. § 1.6038-4(h).
26. Treas. Reg. § 1.6038-4(b)(1)(i). Under U.S. GAAP, generally, if an entity owns a majority voting interest in another legal entity, the majority owner must combine the financial statements of the majority-owned entity with its own financial statements in consolidated financial statements. Financial Accounting Standards Board, Accounting Standards Codification 810-10-15, "Consolidation—Overall—Scope and Scope Exceptions."
27. Treas. Reg. § 1.6038-4(b)(4).
28. Treas. Reg. § 1.6038-4(b)(2).
29. Treas. Reg. § 1.6038-4(b)(8).
30. *Id.*
31. Treas. Reg. § 1.6038-4(b)(3).
32. Treas. Reg. § 1.6038-4(b)(6).
33. *Id.*
34. Treas. Reg. § 1.6038-4(b)(8). Note that the regulations provide that "[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 be 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 jurisdiction." *Id.* This, as already mentioned above, excludes from U.S. reporting foreign persons paying tax on FDAP income.
35. *Id.*
36. *Id.* The regulations provide that in the case of a tax jurisdiction which does not impose an income tax on corporations, a corporation organized or managed in that tax jurisdiction will be treated as a resident in that tax jurisdiction unless it is treated as a resident in another tax jurisdiction under another provision of the regulations. *Id.*
37. "Country-by-Country Reporting: Final Regulations," 81 Fed. Reg. 42,482 (June 30, 2016), The Preamble to the regulations also clarifies that where a partnership creates a PE for itself or its partners, the CbC information with respect to the PE is not reported as stateless, but is instead reported as part of the information on the CbC report for the PE's tax jurisdiction of residence. *Id.*
38. Deloitte, "United States Issues Final Country-by-Country Reporting Regulations." *Global Transfer Pricing Alert 2016-024.* July 1, 2016. Available at <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-global-transfer-pricing-alert-16-024-1-july-2016.pdf>.

39. "Country-by-Country Reporting: Final Regulations," 81 Fed. Reg. 42,482 (June 30, 2016).
40. Treas. Reg. § 1.6038-4(e)(2). Interestingly enough, the regulations clarify that although the ultimate parent entity of the U.S. MNE group must maintain records to support information furnished on Form 8975, it is not required to create or maintain any records reconciling the amounts provided with the tax returns of any jurisdiction or applicable financial statements. Treas. Reg. § 1.6038-4(g).
41. Treas. Reg. § 1.6038-4(d)(1)(i).
42. Treas. Reg. § 1.6038-4(d)(1)(ii).
43. Treas. Reg. § 1.6038-4(d)(1)(iii).
44. Treas. Reg. § 1.6038-4(d)(1)(iv). The constituent entity's tax identification number must be the number used for the constituent entity by the tax administration of the constituent entity's tax jurisdiction of residence. *Id.*
45. Treas. Reg. § 1.6038-4(d)(1)(v).
46. Treas. Reg. § 1.6038-4(d)(2)(i)-(ix).
47. The regulations as proposed had originally provided that employees should be reflected in the tax jurisdictions in which the employees performed work for the U.S. MNE group. The change in the final regulations is responsive to comments highlighting this methodology's incongruity with the guidance in Final Action 13 and the difficulty of determining the work location of traveling employees. The final regulations allow the ultimate parent to be nimble its reporting methodology; the number of employees may be reported as of the end of the accounting period; as an average of employment levels for the annual accounting period; or on any other reasonable basis consistently applied across tax jurisdictions and from year to year. Treas. Reg. § 1.6038-4(d)(3)(iii).
48. Treas. Reg. § 1.6038-4(d)(3)(ii).
49. *Id.*
50. A comprehensive listing of these entities may be found in Treas. Reg. § 1.6038-4(d)(3)(ii) and includes entities exempt from taxation by way of IRC sections 501(a), 501(c), 501(d) or 401(a); state colleges or universities described in section 511(a)(2)(B); certain annuity and deferred compensation plans described in sections 403(b) or 457(b); individual retirement plans or annuities defined in section 7701(a)(37); qualified tuition programs described in sections 529; qualified ABLE programs described in section 529A; and Coverdell education savings accounts described in section 530.
51. Treas. Reg. § 1.6038-4(c).
52. Treas. Reg. § 1.6038-4(k).
53. Alex M. Parker, "Delay in Country-by-Country Reporting Rules Incites Backlash," January 14, 2016, *Bloomberg BNA*. Available at <http://www.bna.com/delay-countrybycountry-reporting-n57982066223/>.
54. "Country-by-Country Reporting: Final Regulations," 81 Fed. Reg. 42,482 (June 30, 2016).
55. See OECD (2016), *Guidance on the Implementation of Country-by-Country Reporting — BEPS Action 13*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris.
56. Treas. Reg. § 1.6038-4(j).
57. "Country-by-Country Reporting: Final Regulations," 81 Fed. Reg. 42,482 (June 30, 2016).
58. "Country-by-Country Reporting: Final Regulations," 81 Fed. Reg. 42,482 (June 30, 2016).
59. "Former GE Counsel Peter Barnes Give Views on BEPS, Country-by-Country Reporting, Documentation," Tax Management Transfer Pricing Report, Vol. 22, No. 17, January 9, 2014.
60. *See* Announcement 2010-9. Available at <https://www.irs.gov/pub/irs-drop/a-10-09.pdf>.
61. *See* Lowell & Martin, *U.S. International Taxation: Practice and Procedure* ¶ 10.02[1]. Thomson Reuters/WG&L; *see also* Lowell, Martin & Levey, *International Transfer Pricing: OECD Guidelines* ¶ 14.07[12]. Thomson Reuters/WG&L.
62. "Country-by-Country Reporting: Final Regulations," 81 Fed. Reg. 42,482 (June 30, 2016).
63. *Id.*
64. "Country-by-Country Reporting: Notice of Proposed Rulemaking," 80 Fed. Reg. 79,795 (December 23, 2015).
65. Public Hearing on Proposed Regulations, 26 CFR Part 1, "Country-by-Country Reporting" [REG-109822-15], 1545-BM70. Washington, DC. May 13, 2016. Available at <http://www.dbriefsap.com/bytes/1.1_1Transcript%20of%20the%20U.S.%20public%20hearing%20on%20the%20proposed%20CbC%20regulations.pdf>.
66. Douglas A. Shackelford and Joel Slemrod, "Public Disclosure of Corporate Tax Return Information: Accounting, Economics, and Legal Perspectives," *National Tax Journal*, December 2003. DOI: 10.17310/ntj.2003.4.06.
67. Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0198&from=EN>.