

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 * * *

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

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 than 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.

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[FR Doc. 2016-15482 Filed: 6/29/2016 8:45 am; Publication Date: 6/30/2016]