

National Security Considerations with Respect to Country-by-Country Reporting

Notice 2018-31

SECTION 1. OVERVIEW

This notice provides additional guidance concerning country-by-country (CbC) reporting requirements under section 6038 and §1.6038-4. In consideration of the national security interests of the United States, this notice addresses modifications to the reporting requirement under §1.6038-4 with respect to certain U.S. multinational enterprise (MNE) groups. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to amend §1.6038-4 to incorporate the guidance described in this notice. Prior to the issuance of these amendments, U.S. MNE groups may rely on the provisions of section 3 of this notice.

SECTION 2. BACKGROUND

On December 23, 2015, a notice of proposed rulemaking (REG-109822-15) relating to the furnishing of CbC reports by certain United States persons under section 6038 was published in the **Federal Register** (80 FR 79795). The preamble to the proposed regulations requested comments concerning the need for a national security exception to the CbC information reporting requirement. On June 30, 2016, the Treasury Department and the IRS published final regulations (TD 9773) requiring annual CbC reporting on Form 8975, *Country-by-Country Report* (CbC report), by certain United States persons that are ultimate parent entities of U.S. MNE groups that have annual revenue for the preceding reporting period of \$850,000,000 or more. The

final regulations do not provide a general exception for information that may relate to national security, but the preamble to the final regulations stated that the Department of Defense would continue to consider the national security implications of CbC reports in particular fact patterns. Based on subsequent consultations with the Department of Defense, the Treasury Department and the IRS have determined that national security interests require modifications to the reporting requirements for U.S. MNE groups that are specified national security contractors as defined in section 3.01 of this notice and that have a reporting requirement under §1.6038-4.

SECTION 3. MODIFICATIONS TO CBC REPORTING FOR SPECIFIED NATIONAL SECURITY CONTRACTORS

.01 Specified National Security Contractor

For purposes of this notice, a U.S. MNE group is a “specified national security contractor” if more than 50 percent of the U.S. MNE group’s annual revenue, as determined in accordance with U.S. generally accepted accounting principles, in the preceding reporting period is attributable to contracts with the Department of Defense or other U.S. government intelligence or security agencies.

.02 Modifications to Manner of Reporting on Form 8975

The Treasury Department and the IRS intend to amend §1.6038-4 to provide the definition of specified national security contractor and modifications to the manner of reporting on Form 8975 for such U.S. MNE groups. The amended regulations will provide that U.S. MNE groups that have a Form 8975 filing obligation under §1.6038-4 and are specified national security contractors may provide Form 8975 and Schedules

A (Form 8975) in the following manner:

- Complete Form 8975 with a statement at the beginning of Part II, Additional Information, that the U.S. MNE group is a specified national security contractor as defined in this notice;
- Complete one Schedule A (Form 8975) for the Tax Jurisdiction of the United States with aggregated financial and employee information for the entire U.S. MNE group in Part I, Tax Jurisdiction Information, and only the ultimate parent entity's information in Part II, Constituent Entity Information; and
- Complete one Schedule A (Form 8975) for the Tax Jurisdiction "Stateless" with zeroes in Part I, Tax Jurisdiction Information, and only the ultimate parent entity's information in Part II, Constituent Entity Information.

No other Schedule A (Form 8975) or additional information is required.

.03 Amended Form 8975 and Schedules A (Form 8975)

A specified national security contractor that has already filed Form 8975 and Schedules A (Form 8975) for prior reporting periods may file an amended Federal income tax return (following the instructions for filing of amended Federal income tax returns) and attach an amended Form 8975 and Schedules A (Form 8975) in the manner provided in section 3.02 with the amended report checkbox on Form 8975 marked. Specified national security contractors that do not electronically file their amended Federal income tax returns should, in addition to filing an amended Federal income tax return with an amended Form 8975 and Schedules A (Form 8975), mail a

copy of page 1 of their amended Form 8975 to Ogden as provided in the Instructions for Form 8975 and Schedule A (Form 8975) under the heading “Where to File.” In order to ensure originally-filed CbC reports are not automatically exchanged, specified national security contractors that are filing amended Form 8975 and Schedules A (Form 8975) to supersede an already-filed Form 8975 and Schedules A (Form 8975) should do so by April 20, 2018, if filing an amended Federal income tax return on paper, or by May 25, 2018, if filing electronically.

SECTION 4. EFFECTIVE DATE

The amendments to the regulations described in this notice shall apply to CbC reports and amended CbC reports filed after March 30, 2018.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is Melinda E. Harvey of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Melinda E. Harvey (202) 317-6934 (not a toll-free call).