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Oil & Gas Alert

Final rules country-by-country reporting

July 2016



Final rules with respect to country-by-country reporting released

On 29 June 2016, the Internal Revenue Service (IRS) and the Treasury Department released much-anticipated final regulations (TD 9773) on country-by-country (CbC) reporting (the Final Regulations). The Final Regulations apply to reporting periods of ultimate parent entities of US multinational enterprises (MNE) groups that begin on or after the first day of the tax year of the ultimate parent entity that begins on or after 30 June 2016.

According to the preamble to the Final Regulations, Treasury and the IRS intend to allow ultimate parent entities of US MNE groups to file CbC reports for reporting periods that begin on or after 1 January 2016, but before the applicability date of the Final Regulations, under a procedure to be provided in separate, forthcoming guidance. In addition, the Preamble states that the

Treasury Department is working to ensure that foreign jurisdictions implementing CbC reporting requirements will not require constituent entities of US MNE groups to file a CbC report with the foreign jurisdiction if the US MNE group files a CbC report with the IRS under this procedure and the CbC report is exchanged with that foreign jurisdiction under a competent authority arrangement.

The Final Regulations require ultimate parent entities of US MNE groups with prior year income that exceeds the reporting threshold to file Form 8975 with the ultimate parent entity's income tax return for the year on or before the due date, including extensions, for filing the return. The reporting threshold for filing Form 8975 is \$850M, which is roughly the equivalent value of €750M on 1 January 2015 as provided in the final base erosion and profit shifting (BEPS) report.

The CbC reports will have confidentiality protections of Section 6103 of the Internal Revenue Code and will be treated as a return. According to the preamble to the Final Regulations, the Treasury department plans to enter into competent authority arrangements for automatic sharing of CbC reports with jurisdictions with which the US already has tax treaties. These arrangements will include proper safeguards for non-disclosure of information, and procedures for temporarily suspending sharing when noncompliance is suspected.

For oil and gas companies (and energy companies more broadly) that have operations or investments outside of the United States, the Final Regulations contain significant provisions that will require additional awareness and compliance. While clarifying guidance is anticipated, taxpayers should evaluate the impact of the Final Regulations and the procedures required to comply with the new rules.

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