Internal Revenue Service
DEPARTMENT OF THE TREASURY

LB&I Process Unit

Unit Name	Country-by-Country (CbC) Report in the Transfer Pricing Risk Analysis Process	
Primary UIL Code	09411	Transfer Pricing Outbound

Library Level	**Title**
Knowledge Base	International
Shelf	Business Outbound
Book	Transfer Pricing Outbound
Chapter	Core IRC 482

Document Control Number (DCN)	INT-P-248
Date of Last Update	04/12/22

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Process Overview

CbC Report in the Transfer Pricing Risk Analysis Process

Globalization has resulted in a shift from country-specific operating models to global models based on matrix management organizations and integrated supply chains that centralize several functions at a regional or global level. Moreover, the growing importance of the service component of the economy, and of digital products and services that often can be delivered over the Internet, has made it much easier for businesses to establish key activities in geographic locations that are distant from the physical location of their customers. These developments have led to creative, sometimes aggressive tax planning making use of different tax rules and rates in different countries. These developments have opened opportunities for multinational enterprise (MNE) groups to greatly minimize their tax liability by shifting income between countries. Many governments are faced with less revenue and a higher cost to ensure compliance. In developing countries, the lack of tax revenue leads to critical under-funding of public investment that could help promote economic growth. International tax law is therefore a key pillar in supporting the growth of the global economy. Even though the audit process is a key resource, tax administrations lack the tools for early detection of aggressive tax planning strategies. Timely, targeted, and comprehensive information is essential to enable governments to effectively identify compliance risk areas.

Weaknesses in the coherence of existing tax rules created opportunities for base erosion and profit shifting, requiring bold moves by policy makers to restore confidence in the system and to ensure that profits are taxed where economic activities take place and value is created. Base erosion and profit shifting (BEPS) refers to tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax jurisdictions. BEPS undermines the integrity of the tax system; some taxpayers report low corporate taxes while others bear a higher tax burden. In response, over 100 countries and jurisdictions are collaborating to implement BEPS measures and tackle BEPS under the guidance of the Organisation for Economic Co-operation and Development (OECD).

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Process Overview (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process

The OECD promotes policies that improve the economic and social well-being of people around the world. The OECD provides a forum in which governments can work together to share experiences and seek solutions to common problems. At the request of the Group of 20 (G20) finance ministers, the OECD developed an action plan to address BEPS. They started their work with a few goals in mind:

1. Identify actions needed to address BEPS.
2. Set a deadline to implement these actions.
3. Identify resources needed and methodology to implement these actions.

The result was the establishment of 15 specific actions, commonly referred to as the BEPS package, that give governments the domestic and international instruments needed to prevent corporations from inappropriately paying little or no taxes.

The OECD Action Plan on BEPS was introduced on July 19, 2013, with a goal of completion within two years. Final reports on the 15 action areas of the BEPS Project were published in October 2015. Action 13 introduced a standardized three-tiered approach to transfer pricing documentation for multinational enterprises consisting of a Master File, a Local File, and an obligation on certain MNE groups to annually file a Country-by-Country Report (CbC Report). This standardized approach to transfer pricing documentation will enhance transparency for tax administration, including the CbC Report requirement that the Ultimate Parent Entity (UPE) of the MNE group provide certain information to the tax administration in their jurisdiction of tax residence that includes, for example, its revenue, economic activity, and taxes paid, according to a common template.

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Process Overview (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process

The three recommended documents (Master File, Local File, and CbC Report) require taxpayers to articulate consistent transfer pricing positions. The CbC Report is intended to be used by tax administrations only for the purpose of assessment of high-level transfer pricing risks and other BEPS related risks, but not as the basis for computing tax liabilities.

The United States is not currently requiring the preparation of or filing of the Master and Local Files since substantially similar information is required under IRC 6662(e) transfer pricing documentation. It is requiring the preparation of a CbC Report.

On June 30, 2016, the U.S. Treasury and IRS published final Treas. Reg.1.6038-4 on CbC reporting. These regulations require certain U.S. persons that are the UPE of an MNE group with annual revenues for the preceding reporting period of $850,000,000 or more to file annually with the IRS a Form 8975, *Country-by-Country Report*, and accompanying Schedules A (Form 8975), *Tax Jurisdiction and Constituent Entity Information*, collectively the "U.S. CbC Report."

The purpose of this Practice Unit is to describe the background that led to the required filing of Form 8975 and accompanying Form 8975, Schedules A by certain U.S. MNEs and to provide guidance about the appropriate use of these forms in the IRS high-level transfer pricing risk assessment process.

Process Overview (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process

Below are examples of circumstances under which this process unit may apply. This is not an exhaustive list. The U.S. CbC Report is a tool to identify potential transfer pricing risk but should not be the sole factor used to determine whether to proceed with an examination of a transfer pricing issue.

- The U.S. CbC Report may be used during the initial assessment of a tax return for examination potential to identify whether there are indicators of transfer pricing risk.
- The U.S. CbC Report may be used once a tax return has been selected for examination to evaluate the transfer pricing risk of related party transactions in general or to further evaluate a significant related party transaction already identified.

LB&I personnel before accessing a tax return that contains Form 8975 must complete *Country-by-Country Report Training*, Course # 67517 in the ITM (Integrated Talent Management) system. This training provides an introduction of the Country-by-Country (CbC) Reporting requirements for U.S. MNEs and the appropriate use of such information by LB&I Examination Teams. The training provides an introductory overview and understanding of the background that led to the U.S. CbC Report, the information presented in the U.S. CbC Report, and the appropriate and effective use of the U.S. CbC Report in the audit process, as well as the confidentiality rules applicable to the information received in the U.S. CbC Reports and those from foreign jurisdictions.

Process Overview (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process

This Unit will focus on:

1. The High-Level Risk Analysis of a tax return with a U.S. CbC Report,
2. Form 8975, Parts I and II,
3. Schedule A (Form 8975), Parts I, II, and III,
4. Applicable penalties for failure to file or filing an incomplete Form 8975,
5. Next steps after indicators of a transfer pricing issue are identified,
6. Confidentiality requirements of the CbC Report information.

This Unit does not cover how to use exchanged CbC Reports received from foreign jurisdictions in the risk analysis process. The CbC Report data may be requested for foreign-controlled U.S. taxpayers by filling out a CbC Data Access Certification form and email the certification form to the Transfer Pricing Risk Assessment (TPRA) team at *LB&I TPRA (lbi.tpra@irs.gov) using the subject: CbC Data Request. You will be sent an excel file with available CbC data matching your request

In order to obtain the data, you must first complete IRS Country-by-Country Report Training, Course # 67517. If you have any questions, please contact TPRA at *LB&I TPRA.

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Process Overview (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process

Legal Guidance

Treas. Reg. 1.6038-4 requires UPEs of U.S. MNE groups with consolidated revenue in excess of $850 million in the prior reporting period to file the U.S. CbC Report. This treasury regulation describes the information required on the annual information return for the reporting period. The rules in this regulation 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 June 30, 2016.

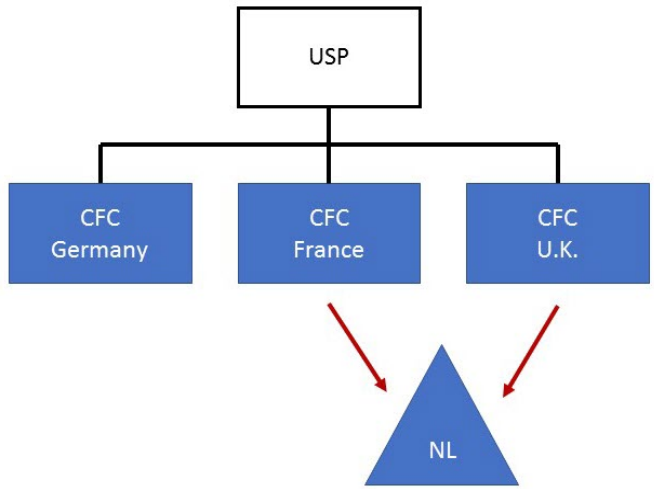
CbC Reporting Guidance: https://www.irs.gov/businesses/international-businesses/country-by-country-reporting-guidance.

Process Overview (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process

The following example focuses on the requirement for filing the U.S. CbC Report by a U.S. ultimate parent entity.

- USP is the U.S. ultimate parent entity of an MNE group consisting of three 100% owned CFCs. The CFCs are located in Germany, France, and the U.K.
- The U.K. CFC and France CFC each own a 50% interest in a Netherlands partnership, NL, which does not have a tax jurisdiction of residence.
- USP meets the requirements to file Form 8975, and it will include a Form 8975, Schedule A for each of the U.S., Germany, France, and the U.K. Since the partnership does not have a tax jurisdiction of residence, USP will also file a Form 8975, Schedule A for a "stateless" tax jurisdiction.
- In addition, 50% of the partnership income will also be reported on the Form 8975, Schedule A for France and 50% will be reported on the Form 8975, Schedule A for the U.K.



Detailed Explanation of the Process

CbC Report in the Transfer Pricing Risk Analysis Process
Analysis
BEPS relates to situations where multinational enterprises exploit gaps and mismatches between the different countries' tax rules which could lead to income not taxed in any jurisdiction or taxed at a very low rate. It also relates to arrangements that achieve no or low taxation by shifting profits away from the jurisdictions where the underlying activities that gave rise to the income are performed. In general, a taxpayer may be in a low or no tax situation for various reasons, such as certain tax incentives, loss situation, etc. It becomes a tax policy concern when the taxable income is artificially separated from the activities of the jurisdiction that generate the profit. It is due to the gaps and mismatches in the interaction of different tax systems, and in some cases because of the application of bilateral tax treaties, that income from cross-border activities may be subject to no tax or low tax. Realizing this disparity, OECD developed rules to enhance transparency for tax administrations, at the same time taking into consideration the compliance costs for businesses. This includes a requirement that MNEs provide all relevant governments with needed information on their global allocation of the income, economic activity and taxes paid among countries according to a common template. OECD has recommended 15 Action plans to address the BEPS issues; Action 13 addresses the transfer pricing documentation. As outlined in the BEPS Action 13 report, by entering into competent authority arrangements for the exchange of CbC Reports, all OECD and G20 countries have committed to increase international tax transparency and improve access of their respective tax authorities to information relating to global allocation of income, the taxes paid, and certain indicators of the location of economic activity among tax jurisdictions in which MNE operates through automatic exchange of annual CbC Reports.

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Detailed Explanation of the Process (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Analysis
The Action 13 Report introduced a three-tiered approach to transfer pricing documentation, consisting of a Master File containing information relevant for all members of a multinational group; a Local File referring specifically to material intercompany transactions of the local taxpayer; and a CbC Report containing certain information relating to the global allocation of the group's income and taxes, together with indicators of the location of economic activity within the group. The CbC Report requires aggregate tax information relating to the global allocation of the income, the taxes paid, and certain indicators of the location of economic activity among tax jurisdictions in which the MNE group operates. The annual CbC Report will provide, for each jurisdiction in which the MNE does business, the amount of revenue, profit before income tax, income tax paid and accrued, the number of employees, stated capital, retained earnings, and tangible assets. It also requires the MNE group to identify each entity within the group doing business in a tax jurisdiction and to provide an indication of the business activities each entity engaged in during the reporting period (Background, Summary, and Implications of the OECD/G20 Base Erosion and Profit Shifting Project, JCX-139-15).

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CbC Report in the Transfer Pricing Risk Analysis Process

Analysis
Several countries have recognized the significant benefits of the U.S. CbC Report in high-level risk assessment of transfer pricing and other BEPS related tax risks. Therefore, various tax jurisdictions have agreed that implementing CbC reporting is a key priority in addressing BEPS risks, as recommended in the Action 13 Report. They did this by way of introducing domestic frameworks and entered into Competent Authority Arrangements (CAAs). The United States entered into a number of bilateral CAAs, while many jurisdictions signed on to the Multilateral CAA for the international exchange of CbC Reports. Each of the CAAs contains provisions on the scope, timing and confidentiality of the CbC Report information automatically exchanged among various tax jurisdictions. On June 30, 2016, U.S. Treasury and the IRS published Treas. Reg. 1.6038-4 which provides requirements for CbC reporting. The final Regulations require certain U.S. persons that are the ultimate parent entity of a MNE group to file an annual report on Form 8975, *Country-by-Country Report*, and Form 8975, Schedules A, *Tax Jurisdiction and Constituent Entity Information*, collectively the U.S. CbC Report containing information on a country-by-country basis relating to the U.S. MNE group's income and taxes paid, together with certain indicators of the location of the MNE's economic activity.

Detailed Explanation of the Process (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Analysis
The regulation requires filing of the U.S. CbC Report annually with the IRS for the tax years beginning on or after June 30, 2016. This effective date created a gap year during which U.S.-parented MNE groups could be required to file the CbC Report directly in foreign jurisdictions as some countries adopted CbC reporting rules for annual accounting periods beginning on or after January 1, 2016. A voluntary filing was allowed for the gap period beginning after January 1, 2016, and before June 30, 2016. OECD guidance on implementing CbC reporting recommends other countries accept reports filed voluntarily in the United States and in other countries for years beginning on or after January 1, 2016, so that voluntary filing in the United States for the calendar year 2016 satisfies the requirement of filing the CbC Report in other countries (Rev. Proc. 2017-23). For tax years beginning on or after June 30, 2016, certain U.S. taxpayers, including those that file Forms 1120, 1065, 1065-B, 1120S, 1120-L, 1120-PC, 1120-REIT, 990-T, and 1041, with revenues of $850 million or more for the immediately preceding annual accounting period are required to file: Form 8975, *Country-by-Country Report* and Form 8975, Schedule A. The Form 8975 and Form 8975, Schedules A should be attached to the above applicable returns. When a tax authority receives a CbC Report from a UPE, it is required to exchange that report with certain other tax jurisdictions within 15 months of the receipt of the information (Chapter 2 & 3, Country-by-Country Reporting – Handbook on Effective Implementation © OECD 2017). More detailed information relating to the process of the exchange and how to access the exchanged information will be addressed in future practice units.

Detailed Explanation of the Process (cont’d)

CbC Report in the Transfer Pricing Risk Analysis Process
Analysis
Article 26 (Exchange of Information and Administrative Assistance) of the U.S. model treaty authorizes the exchange of information for tax purposes, including the automatic exchange of information. The CbC Competent Authority Arrangement (CAA) requires an underlying legal instrument that allows for the automatic exchange of information such as an income tax treaty or a Tax Information Exchange Agreement (TIEA)) that is in force. The CAA formalizes the agreed-upon terms and conditions applicable to the exchange of CbC reports. Prior to the completion of a CbC CAA with a foreign tax administration, the IRS ensures the jurisdiction has data confidentiality safeguards and infrastructure in place to protect against inappropriate access and disclosure of the tax information, including information that has been exchanged. Inappropriate disclosure by a treaty partner will not result in adverse consequences to an IRS employee. The steps involved in using the Form 8975 and Form 8975, Schedule A, the CbC Report, in the Transfer Pricing Risk Analysis process include but are not limited to the following: ▪ Conduct a High-Level Risk Analysis of a tax return with a CbC Report in accordance with the LB&I Examination process (Steps 1 to 3). ▪ Review if the required Form 8975 and the Form 8975, Schedules A were attached to a timely filed tax return and determine if a penalty applies for failure to file or filing a materially incomplete or inaccurate U.S. CbC Report (Step 4). ▪ If the CbC Report provides indicators of transfer pricing risk, review other sources of information in order to confirm a material transfer pricing risk exists (Step 5). ▪ Follow the applicable confidentially rules for the information reported on the CbC Report (Step 6).

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Process Applicability

CbC Report in the Transfer Pricing Risk Analysis Process

Effective Use of CbC Reports - Form 8975 and Schedule A (Form 8975)

Criteria	Resources
▪ The examiner performs a risk analysis for controlled (or related party) transactions: − Review Form 8975 and its accompanying Form 8975, Schedules A to obtain a high-level understanding of the taxpayer's operations and to identify significant intercompany revenue by tax jurisdiction. ▪ Evaluate whether there is risk that these jurisdictions with significant intercompany revenue have earned unreasonably high profits for their business activity and geographic location. − Review Form 5471, Schedule M and/or Form 5472, Part IV for the nature of the controlled transactions (e.g., sale or purchase of tangible goods, manufacturing, technical services, royalty payments, cost-sharing payments, platform contribution transaction (PCT) payments, financing, etc.) and the amounts of these transactions. − Review available transfer pricing documentation. − Review Form 1120 for related Schedule M-3s and Uncertain Tax Positions (UTP) disclosures. − Review previous examination cycle files.	▪ IRC 482 - *Allocation of Income and Deductions Among Taxpayers* ▪ Treas. Reg.1.6038-4 - *Information returns required of certain United States persons with respect to such person's U.S. multinational enterprise group.* ▪ Form 8975 - *Country-by-Country Report* ▪ Form 5471, Schedule M – *Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons* ▪ Form 5472, Part IV – *Monetary Transactions Between Reporting Corporations and Foreign Related Party* ▪ Form 1120, Schedule M-3 – *Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million or More*

Process Applicability (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process	
Criteria	**Resources**
▪ The examiner has identified a significant controlled (or related-party) transaction: − Review Form 5471 Schedule M and/or Form 5472 Part IV to identify nature of the controlled transaction(s) and the amounts of the controlled transactions. − Review Form 8975 and its accompanying Schedule A (Form 8975) to consider whether the controlled transaction(s) is within a reasonable profitability range for the business activity and geographic location. − Review available transfer pricing documentation. − Review Form 1120 for related Schedule M-3s and Uncertain Tax Positions (UTP) disclosures. − Review previous examination cycle files.	▪ Form 1120, Schedule UTP - *Uncertain Tax Position Statement* ▪ IRM 4.61.3 - *Development of IRC 482 Cases*

Summary of Process Steps

CbC Report in the Transfer Pricing Risk Analysis Process
Process Steps
Following are the major steps involved in using the Form 8975 and Schedule A (Form 8975), the CbC Report in the Transfer Pricing Risk Analysis process.

Step 1	Conduct a High-Level Risk Analysis in Accordance with the LB&I Examination Process
Step 2	Review Form 8975, Parts I and II, and Consider These Items
Step 3	Review Form 8975, Schedule A, Parts I, II, and III, and Consider These Items
Step 4	Consider Whether Penalties Apply for Failure to File or Filing an Incomplete Form 8975

Summary of Process Steps (cont’d)

CbC Report in the Transfer Pricing Risk Analysis Process
Process Steps

Step 5	Review of Other Information After Indicators of a Transfer Pricing Issue are Identified
Step 6	Comply with the Confidentiality Requirements for Use and Disclosure of the CbC Report Information

Step 1: Conduct a Risk Analysis

CbC Report in the Transfer Pricing Risk Analysis Process
Step 1
Conduct a high-level risk analysis in accordance with the LB&I Examination process.

Considerations	Resources
There are three stages to the LB&I examination process: Planning, Execution and Resolution. The planning phase of the examination process determines the scope of the audit. Issues selected for examination should have the broadest impact on compliance regardless of the size or type of entity.	▪ Pub. 5125 - *LB&I Examination Process* ▪ IRM 4.46.3 - LB&I Examination Process, *Planning the Examination*
As with any issue identified for potential examination, the decision to select an issue for audit is contingent upon the findings from the risk analysis, discussions with the taxpayer, materiality considerations, and other steps outlined in the Planning phase of the LB&I Examination Process.	
The CbC Report provides a high-level overview of the taxpayer operations and their tax profile. It is a tool to identify potential transfer pricing risk but should not be the sole factor used to determine whether to proceed with an examination of a transfer pricing issue.	▪ IRM 4.61.3.3.8 - *Development of IRC 482 Cases, Initial Transfer Pricing Risk Assessment*
Transfer pricing risk includes the risk that a controlled transaction between two related parties does not result in arm's length pricing. This may lead to the shifting of income outside the United States. As such, a transfer pricing risk analysis considers whether this risk is present during an examination.	

Step 1: Conduct a Risk Analysis (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 1

Considerations	Resources
Examples of income shifting include: ▪ U.S. Parent sells product to a foreign subsidiary at below market price, allowing its subsidiary to resell and retain profits overseas. ▪ Foreign Parent licenses intangibles to its U.S. manufacturing subsidiary at an excessive royalty rate. High royalty deduction reduces U.S. taxable income. ▪ U.S. Parent loans operating funds to a foreign subsidiary at no interest. The lack of interest income reduces U.S. taxable income. IRC 482 allows the IRS to make allocations to ensure that taxpayers clearly reflect income attributable to controlled transactions and to prevent the evasion of taxes. Preliminary Risk Indicators: ▪ There is a high value of related party revenues in a particular jurisdiction, ▪ Significant revenue but little substantial activities in a particular jurisdiction, ▪ Intellectual Property (IP) is separated from related activities within a group, ▪ A group has activities in a jurisdiction that poses a BEPS risk.	

Step 1: Conduct a Risk Analysis (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 1

Considerations	Resources
Examples of Risk Analysis Steps: ▪ To identify a high value of related party revenues in a particular jurisdiction, look at whether the ratio of Form 8975, Schedule A, Part I, line 1(b) to Form 1120, line 1a is greater than Industry Standard. ▪ To identify significant revenue but little substantial activities, compare the ratio of revenue to employees in the jurisdiction to the ratio of total revenue per employee or the ratio of revenue to assets in the jurisdiction to the ratio of total revenue per assets. ▪ To identify an IP holding company look for activity code for R&D company (CBC 501) and for R&D holding or managing IP(CBC 502). ▪ To identify a dual resident entity that may indicate a structure conducive to inappropriately shifting income look for the entry on Form 8975, Schedule A, Part II, line 3. It is important to establish the facts and review the supporting documentation that substantiates that intercompany transactions are charged at an arm's length price.	

Step 1: Conduct a Risk Analysis (cont’d)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 1

Considerations	Resources
The following pre-audit techniques may be useful in identifying tax risk indicators when reviewing a U.S. CbC Report. They are explained in more detail in Steps 2 and 3. ▪ Obtain a high-level understanding of the taxpayer’s operations by reviewing the U.S. CbC Report. − Consider whether the taxpayer operates in a low-tax or no-tax jurisdiction where there may be an incentive to shift income. − Understand the main business activities that are being carried on within the United States and in foreign jurisdictions. Consider changes over time. − Use the CbC Report in conjunction with other transfer pricing documentation to develop an understanding of the global operational footprint of the MNE group. ▪ Utilize the financial information provided on Form 8975, Schedule A to calculate financial ratios and compare to applicable standard industry ratios and/or the expected arm’s length profit range for a primary business activity and geographical region. − Substantial deviations from standard industry ratios or the arm’s length range may indicate transfer pricing risk. − Consider whether the information provided on the U.S. CbC Report makes sense when compared to other information provided by the taxpayer.	▪ IRM 4.61.3 - *Development of IRC 482 Cases* ▪ Form 8975 - *Country-by-Country Report* ▪ Form 8975 Instructions

CbC Report in the Transfer Pricing Risk Analysis Process
Step 1

Considerations	Resources
For issues related to information on the U.S. CbC Report, the team may request the source document for any amount reported on Form 8975, and Schedule A to Form 8975 if it relates to a tax issue. Records must be maintained to support the information on Form 8975; however, the U.S. ultimate parent entity is not required to create and maintain records that reconcile amounts provided on Form 8975 with the tax returns of any tax jurisdiction or applicable financial statements.	

Step 1: Conduct a Risk Analysis (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 1

Considerations	Resources
The Master File and Local Files are separate and distinct from the CbC Report. The OECD Master File and Local File recommendation is not required by the United States (see Explanation of Process); therefore, these will not be filed with the IRS and must be obtained by requesting the relevant information from the taxpayer or through exchange of information procedures, if needed. ▪ The Master File is high-level information regarding the nature of global business operations, overall transfer pricing policies, and the global allocation of income and economic activity, including a brief description of the principal contributions to value creation. It will also include a general description of the MNE's overall strategy for the development, ownership and exploitation of intangibles. As previously discussed, the United States will continue to use IRC 6662(e) transfer pricing documentation, which should be considered along with the U.S. CbC Report to assess transfer pricing risk. ▪ This documentation is developed by taxpayers to explain how transactions with controlled companies are priced and explains why these prices should be considered arm's length. ▪ If TPP is assigned to an audit, they can issue a transfer pricing Information Document Request (IDR) requesting a copy of the 6662 documentation be submitted in 30 days.	

Step 2: Review Form 8975

CbC Report in the Transfer Pricing Risk Analysis Process
Step 2
Review Form 8975, Parts I and II, and consider these items.

Considerations	Resources
The U.S. CbC Report, Form 8975, will be filed by a U.S. business entity that is the ultimate parent entity of a U.S. multinational enterprise group with revenues of $850 million or more in the preceding reporting period. It will be attached to the ultimate parent entity's income tax return. Revenue for purposes of the U.S. CbC Report is not limited to U.S. tax principles. Revenue is defined in Treas. Reg. 1.6038-4(d)(3)(ii). The term revenue includes all amounts of revenue, including revenue from sales of inventory and property, services, royalties, interest and premiums. Certain items are excluded from this definition. There is no special rule for installment sales. For purposes of the $850 million threshold determination, the annual revenue of the U.S. MNE group as a whole, rather than on a constituent entity (an entity within a multinational enterprise group) basis, is considered. Therefore, while a taxpayer may use the group's consolidated financial data, all items of revenue, including for instance gains from investment activities, must be included in making the determination of whether a U.S. CbC Report must be filed. A U.S. CbC Report is not required for a MNE group that does not have a U.S. business entity as its ultimate parent entity.	▪ Treas. Reg.1.6038-4 - *Information Returns Required of Certain United States Persons with Respect to Such Person's U.S. Multinational Enterprise Group* ▪ Form 8975 - *Country-by-Country Report* ▪ Form 8975 Instructions ▪ OCED.org - Guidance on the Implementation of Country-by-Country Reporting."

Step 2: Review Form 8975 (cont’d)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 2

Considerations	Resources
Form 8975, Part I and II, should be reviewed as part of the risk assessment process and as one component in obtaining a high-level understanding of the taxpayer’s operations. Form 8975, Part I, Identification of Filer, is completed by the U.S. ultimate parent entity. It provides identifying information about the ultimate parent entity, such as legal name, address, and employer identification number. This information is the starting point in understanding the organization of the U.S. MNE group, which comprises the ultimate parent entity and all the business entities required to consolidate their accounts with the ultimate parent entity’s accounts under U.S. generally accepted accounting principles (GAAP) applicable to a publicly traded entity, irrespective of whether the ultimate parent entity is actually publicly traded. The ultimate parent entity is a U.S. business entity that is not majority-owned by another business entity and owns at least one other business entity that is organized or tax resident outside of the United States. A business entity is an entity recognized as an entity for U.S. tax purposes (with certain exceptions), including partnerships and certain business trusts. It also includes disregarded entities and permanent establishments (as that term is defined in Treas. Reg. 1.6038-4(b)(3)) of foreign and domestic entities.	

Step 2: Review Form 8975 (cont’d)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 2

Considerations	Resources
A U.S. territory ultimate parent entity may designate a U.S. business entity to file on its behalf. 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 a U.S. business entity and is not majority-owned by another business entity. For example, a Puerto Rico ultimate parent entity may designate its U.S. subsidiary to file on its behalf. Form 8975, Part II, Additional Information, allows an opportunity for the filer to provide additional information related to the U.S. MNE group. Although optional to complete under current rules, this section may prove insightful to the risk assessment process as it may include information about the overall business operations or structure of the group. It may also explain assumptions or conventions used in completing the U.S. CbC Report. Related party revenue on the Form 8975 includes aggregated data for all the constituent entities in that tax jurisdiction. It does not eliminate intra-jurisdiction transactions between constituent entities in that jurisdiction. For example, Form 8975, Schedule A for the U.S. tax jurisdiction would include U.S. to U.S. related party revenue as well as U.S. to foreign.	

Step 2: Review Form 8975 (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 2

Considerations	Resources
An IDR can be issued to the taxpayer asking about relevant facts or information provided in Form 8975, Part I or Part II, that may relate to a tax issue. However, note the following: ▪ There is no requirement for the taxpayer to reconcile any amounts reported on Form 8975, Part II, to the tax returns of any tax jurisdiction or applicable financial statements. ▪ The final regulations do not require the ultimate parent entity to create and maintain records to reconcile the information reported in the U.S. CbC Report to consolidated financial statements or tax returns. The preamble to Treas. Reg. 1.6038-4 explains that this approach provides flexibility for U.S. MNE groups to use the available data for each constituent entity without imposing the potential burden of a need to reconcile information on the CbC Report with accounts that may not even be finalized when the CbC Report is compiled, and it is consistent with the BEPS Action 13 Report. However, the taxpayer is required to maintain records to support the information in the Form 8975 and Form 8975, Schedule A, and as an examiner, you can request to review that source documentation, including any existing records showing reconciliations regarding the completion of the Schedule A for the U.S. if it relates to a tax issue. ▪ The examiner should not ask the taxpayer to reconcile the amounts reported on the Form 8975 to the tax return or to the financial statements. ▪ The taxpayer is required to maintain records to support the information in the Form 8975 and Form 8975, Schedule A. As an examiner, you can request to review the source documentation if it relates to a tax issue. However, examiners should not audit the Form 8975.	▪ Treas. Reg.1.6038-4 - *Information returns required of certain United States persons with respect to such person's U.S. multinational enterprise group* ▪ Form 8975 - *Country-by-Country Report* ▪ Form 8975 Instruction

Step 3: Review Form 8975, Schedule A

CbC Report in the Transfer Pricing Risk Analysis Process
Step 3
Review Form 8975, Schedule A, Parts I, II, and III, and consider these items.

Considerations	Resources
The Form 8975 may be populated from a variety of sources such as applicable financial statements, books and records maintained with respect to the constituent entities, regulatory financial statements, or records used for tax reporting or internal management control purposes. Note that different sources are used to complete the Form 5471. In addition, the Form 8975 includes aggregate financial and employee information for all constituent entities in a tax jurisdiction, whereas Form 5471 is required only for controlled foreign corporations and is filed on an entity-by-entity basis. The U.S. CbC Report contains information on the location of revenue, profits, taxes and economic activities within large multinational groups. This information is reported on Form 8975, Schedule A. Form 8975, Schedule A, Parts I, II and III should be reviewed during the risk analysis process as another component in obtaining a high-level understanding of the taxpayer's operations and in identifying indicators of transfer pricing risk.	▪ Treas. Reg.1.6038-4 - *Information Returns Required of Certain United States Persons with Respect to Such Person's U.S. Multinational Enterprise Group* ▪ Form 8975 - *Country-by-Country Report* ▪ Form 8975 Instructions ▪ Form 8975, Schedule A - *Tax Jurisdiction and Constituent Entity Information* ▪ Form 8975, Schedule A Instructions

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Step 3: Review Form 8975, Schedule A (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 3

Considerations	Resources
A separate Form 8975, Schedule A will be prepared for each tax jurisdiction in which the group has one or more constituent entities (an entity within a MNE group). Since that includes the United States and at least one other foreign tax jurisdiction (including the possibility of "stateless"), a minimum of two Schedules A will be filed with the Form 8975. Part I, Tax Jurisdiction Information, identifies the tax jurisdiction where the filer is reporting constituent entities are resident. As part of the risk analysis process, consider whether the taxpayer operates in a low-tax or no-tax jurisdiction where there may be an incentive to shift income. For example, if there is a large amount of income reported in a country whose tax rate is lower than the U.S. tax rate and income reported is disproportionate to the number of employees, this could be an indicator of transfer pricing risk.	

Step 3: Review Form 8975, Schedule A (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 3

Considerations	Resources
More Specific Discussion of Tax Jurisdiction of Residence The filer may report a "stateless" tax jurisdiction, which means that the filer has one or more constituent entities in their group that does not have a tax jurisdiction of residence. Tax jurisdiction of residence is defined in Treas. Reg. 1.6038-4(b)(8). In general, a business entity is considered a resident in a tax jurisdiction if, under the laws of that jurisdiction, the business is liable to tax therein based on place of management, place of organization, or another similar criterion. However, a business entity will not have a tax jurisdiction of residence if the business entity is only liable to tax in such tax jurisdiction by reason of a tax imposed by reference to gross amounts of income (such as FDAP 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.	▪ Treas. Reg.1.6038-4 - *Information Returns Required of Certain United States Persons with Respect to Such Person's U.S. Multinational Enterprise Group*

Step 3: Review Form 8975, Schedule A (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 3

Considerations	Resources
More Specific Discussion of Tax Jurisdiction of Residence (cont'd) A "stateless" entity is one that does not have a tax jurisdiction of residence. Partnerships, as an example, may be treated as a stateless entity under the current rules. However, if a partnership creates a permanent establishment for itself or its partners, the permanent establishment is not reported as "stateless." Instead, it is reported as a constituent entity in the tax jurisdiction of residence where the permanent establishment is located by writing the name of owner partnership followed by "PE." If all the activities and revenues of the partnership are really that of the permanent establishment, then even though the partnership will be written on the "stateless" schedule, there will be no associated financial amounts or employees to aggregate with other "stateless" entities. If, however, only a portion of the activities and revenues of the partnership are really that of the permanent establishment, the financial amounts and employees should be broken out accordingly among the "stateless" Schedule A data and the permanent establishment's jurisdiction's Schedule A.	▪ Form 8975, Schedule A - *Tax Jurisdiction and Constituent Entity Information* ▪ Form 8975, Schedule A Instructions ▪ IRM 4.61.3 - Development of IRC section 482 Cases

Step 3: Review Form 8975, Schedule A (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 3

Considerations	Resources
More Specific Discussion of Tax Jurisdiction of Residence (cont'd) The Regulations also provide specific guidance with regards to corporations. It states that if corporations are organized or managed in a tax jurisdiction that does not impose an income tax on corporations, then these corporations are not to be treated as "stateless." Instead, they are to be treated as resident in that tax jurisdiction, unless such corporation is treated as resident in another tax jurisdiction. The determining factor of whether an entity is "stateless" is the absence of a tax jurisdiction of residence. The classification of a business entity under Treas. Reg. 301.7701-2 through -7 for U.S. tax purposes has no bearing on the determination of a business entity's tax jurisdiction of residence. If an entity is liable to tax in the entity's jurisdiction of organization, that jurisdiction may be the entity's tax jurisdiction of residence. An entity may be organized in one jurisdiction and not liable to tax there, but the management and control of the entity may be in another jurisdiction and the entity is liable to tax in this other jurisdiction; this other jurisdiction is the entity's tax jurisdiction of residence.	

Step 3: Review Form 8975, Schedule A (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 3

Considerations	Resources
More Specific Discussion of Tax Jurisdiction of Residence (cont'd) The Form 8975, Schedule A is completed for each tax jurisdiction in which the U.S. MNE group has one or more constituent entities resident. One Form 8975, Schedule A is to be completed for all "stateless" entities as well. With respect to foreign eligible entities, a check-the-box election to be treated as disregarded does not affect the tax jurisdiction of residence of the foreign entity. So, if a disregarded entity (DE) has a tax jurisdiction of residence in the U.K., for example, and its owner-CFC also has a tax jurisdiction of residence in the U.K., then both constituent entities would be included on the Form 8975, Schedule A for the U.K. If the DE is in a different country, it is not necessarily stateless. For example, if the DE has a tax jurisdiction of residence in the NL (in other words, the DE is liable to tax in the NL) and the owner-CFC has a tax jurisdiction of residence in the U.K., then the DE would be reported on Schedule A (Form 8975) for the NL, and the owner-CFC would be reported on the Schedule A (Form 8975) for the U.K. If a DE is a U.S. LLC, then it may be treated as "stateless" or as a U.S. constituent entity. A U.S. LLC that is treated as a disregarded entity is normally treated as "stateless" (because the entity is not liable to tax in the United States) unless the U.S. LLC is wholly and directly owned by a U.S. business entity that has its tax jurisdiction of residence in the United States. In that case, as per the instructions to the Form 8975, the U.S. LLC would be reported on the Schedule A (Form 8975) for the United States.	▪ Schedule A (Form 8975) - *Tax Jurisdiction and Constituent Entity Information* ▪ Schedule A (Form 8975) Instructions

Step 3: Review Form 8975, Schedule A (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 3

Considerations	Resources
More Specific Discussion of Tax Jurisdiction of Residence (cont'd) 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. One Schedule A (Form 8975) is to be completed for each tax jurisdiction of residence of the U.S. MNE, including "stateless" if applicable, on which all the constituent entities will be listed for the particular tax jurisdiction in Part II and entities aggregating the financial and employee information requested of those constituent entities is aggregated in Part I.	

Step 3: Review Form 8975, Schedule A (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 3

Considerations	Resources
More Specific Discussion of Tax Jurisdiction of Residence (cont'd) Part I, Tax Jurisdiction Information, also provides financial amounts and employee information reported on an aggregate basis for all constituent entities resident in the tax jurisdiction identified. That information includes the following: ▪ Revenue, unrelated and related party. This includes all amounts of revenue including sales of inventory or property, services, royalties, interest and premiums but excludes intercompany dividends, deemed dividend and imputed earnings. ▪ Profit or loss before income tax. ▪ Total income tax paid on a cash basis to all tax jurisdictions, and any taxes withheld on payments received by the constituent entities. ▪ Total accrued tax expenses recorded on taxable profits or losses, reflecting only operations in the relevant annual period and excluding deferred taxes or provisions for uncertain tax liabilities. ▪ Stated capital. ▪ Accumulated earnings. ▪ Total number of employees on a full-time equivalent basis. It may include external contractors. ▪ Net book value of tangible assets, which does not include cash or cash equivalents, intangibles, or financial assets.	▪ OCED.org - *Country-by-Country Reporting Handbook on Effective Tax Risk Assessment* ▪ Treas. Reg. 1.6038-4(d)(2)

Step 3: Review Form 8975, Schedule A (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 3

Considerations	Resources
More Specific Discussion of Tax Jurisdiction of Residence (cont'd) As part of the risk analysis process, key financial ratios for a jurisdiction may be compared with those of other jurisdictions within the group; with the group as a whole; with potentially comparable entities outside the group; or with industry averages. Information on other parts of the group may be taken from the U.S. CbC Report, while information on other groups and industry ratios may be obtained from commercial databases or built up using a tax authority's own data. Ratios for comparison may include the following: ▪ Profit Margin: Profit Before Tax divided by Total Revenues. ▪ Revenue or Profits per Unit of Economic Activity: − Total Revenues or Profit Before Tax divided by Number of Employees. − Total Revenues or Profit Before Tax divided by Tangible Assets. − Return on Equity: Profit Before Tax divided by the sum of Stated Capital and Accumulated Earnings. Substantial deviations from expectations may indicate transfer pricing risk, but further analysis should be conducted to reach a conclusion.	

Step 3: Review Form 8975, Schedule A (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 3

Considerations	Resources
More Specific Discussion of Tax Jurisdiction of Residence (cont'd) This financial information may also be used to calculate effective tax rates for each jurisdiction in which the MNE group has operations. This may form the basis for an initial controlled foreign corporation (CFC) risk assessment to identify jurisdictions where the group may be paying a relatively low level of tax, although this assessment will be limited as the information on entities in a particular jurisdiction is presented on an aggregated basis (i.e., the results of entities with a low effective tax rate will be aggregated with the results of entities with a higher effective tax rate in the same jurisdiction) and does not necessarily include profit calculations consistent with other tax filings or financial statements. For example, significant profit but little substantial activities in a low tax jurisdiction will give a very low effective tax rate.	

CbC Report in the Transfer Pricing Risk Analysis Process
Step 3

Considerations	**Resources**
More Specific Discussion of Tax Jurisdiction of Residence (cont'd) Consider whether there is a high value or high proportion of related party revenues in a particular jurisdiction. This increases the potential that an error in the transfer prices applied could give rise to a significant tax difference. In that case, additional documentation should be reviewed in order to determine whether there is a transfer pricing risk. For example, transaction level information needs to be analyzed. There are several ways to use the CbC Report employee information for risk analysis; for example, gross revenue generated per employee compared to other jurisdictions, profit per employee, etc. Compare the jurisdictional ratios to the industry standards. It should also be noted that employees for purposes of Form 8975 may include independent contractors, which could vary in importance by industry. Information provided by the taxpayer in Part III of Form 8975, Schedule A might reveal whether or how independent contractors are included.	▪ IRM 4.61.3 - *Development of IRC 482 Cases* ▪ OCED.org - *Country-by-Country Reporting Handbook on Effective Tax Risk Assessment*

Step 3: Review Form 8975, Schedule A (cont’d)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 3

Considerations	Resources
More Specific Discussion of Tax Jurisdiction of Residence (cont'd) Similarly, if the MNE group has significant income in a jurisdiction but very little tangible assets, it could be an indication of the presence of intangibles and an indication of income shifting. ▪ For example, a foreign subsidiary using the IP developed by a U.S. parent in its manufacturing and that does not compensate the U.S. parent (an arm’s length amount) for such use, could have relatively high income in the foreign jurisdiction. Another example could be use of a U.S. tradename in a foreign jurisdiction without (sufficiently) compensating the U.S. owner for such use. Part II, Constituent Entity Information, identifies the separate business entities of the U.S. MNE group that have the tax jurisdiction reported in Part I. It will provide information regarding the legal name, tax identification number (if any), tax jurisdiction of organization or incorporation (if different from residence), and description of the main business activity(ies) for each constituent entity. In general, a constituent entity is any separate business entity of the U.S. MNE group. A business entity is any entity recognized as an entity for U.S. tax purposes (with certain exceptions), including partnerships and business trusts. It also includes disregarded entities and permanent establishments (as that term is defined in Treas. Reg. 1.6038-4(b)(3)) of foreign and domestic entities. Therefore, Form 8975, Schedule A, Part II may include DEs and certain foreign branches that meet the definition of permanent establishments.	▪ Treas. Reg. 1.6038-4(d)(1)

Step 3: Review Form 8975, Schedule A (cont’d)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 3

Considerations	Resources
More Specific Discussion of Tax Jurisdiction of Residence (cont'd) As part of the risk analysis process, consider whether the location of revenues and profits in a group are appropriately aligned with the location of the group's activities. If not, further documentation should be reviewed in order to determine if there is an indication of transfer pricing risk. ▪ For example, if substantial activity is conducted in the United States and minor assembly takes place in a low tax jurisdiction, whereas the revenue and profit reported in the United States is much lower than the profit reported in the low-tax jurisdiction, this might be an indicator of transfer pricing risk. A group’s operating profile in a jurisdiction can be compared with U.S. CbC Report information on the same jurisdiction in earlier periods. This would allow the IRS to identify changes in the nature or level of activity in a jurisdiction over time, as well as anomalous events that may trigger a temporary increase or reduction in revenues or profits. For example, compare Current Year tangible assets to Prior Year tangible assets. A substantial reduction in assets can reveal any disposition of assets to justify a reduction in revenue in that jurisdiction.	

CbC Report in the Transfer Pricing Risk Analysis Process
Step 3

Considerations	Resources
More Specific Discussion of Tax Jurisdiction of Residence (cont'd) Consider whether a group's activities in a jurisdiction are limited to those that pose less transfer pricing risk and therefore require no further analysis. ▪ For example, where a group only has a holding company in a particular jurisdiction (or has a limited number of activities), this may be an indicator of low risk if the level of taxable income in the jurisdiction is low. Consider whether there are jurisdictions with significant profits but little substantial activity. In this case, further documentation should be reviewed in order to determine if there is an indication of transfer pricing risk. ▪ For example, in a low-tax jurisdiction, significant profit may be reported but the main business activity may not align with an expectation for such a high level of profit. Part III, Additional Information, includes relevant information or explanation the filer deemed necessary in order to facilitate the understanding of the information provided in Parts I and II. The information may or may not relate to a specific constituent entity.	

CbC Report in the Transfer Pricing Risk Analysis Process
Step 3

Considerations	Resources
More Specific Discussion of Tax Jurisdiction of Residence (cont'd) The information may be used to explain the tax jurisdiction financial and employee information from Part I. Consider whether information provided in this section assists in obtaining a high-level understanding of the taxpayer's operations or in identifying indicators of transfer pricing risk. Note there is limited guidance or rules on requirements for information to be provided in Part III. Some taxpayers may proactively offer information to explain the data in Parts I and II. Other taxpayers may take a very minimalist approach to providing additional information in Part III. The filer can use the following information to complete the U.S. CbC Report: audited financial statements, books and records maintained with respect to constituent entities, regulatory financial statements, or records used for tax reporting or internal management control purposes.	

Step 3: Review Form 8975, Schedule A (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 3

Considerations	Resources
More Specific Discussion of Tax Jurisdiction of Residence (cont'd) An IDR can be submitted to the taxpayer asking about relevant facts or information provided in Form 8975, Schedule A, Part I, II or III, that may relate to a tax issue. However, note the following: ▪ There is no requirement for the taxpayer to reconcile the amounts reported on Form 8975 and Form 8975, Schedule A to the tax returns of any tax jurisdiction or applicable financial statements. ▪ The examiner should not ask the taxpayer to reconcile the amounts reported on the Form 8975 and Form 8975, Schedule A to the tax return or to the financial statements. ▪ The examiner should not audit the U.S. CbC Report. The information on Form 8975 and Form 8975, Schedule A must not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and a full comparability analysis.	

Step 3: Review Form 8975, Schedule A (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 3

Considerations	Resources
More Specific Discussion of Tax Jurisdiction of Residence (cont'd) Other IRS resources that may be helpful to analyze Form 8975, Schedule A data as part of the risk analysis process include the Auditor's Workbench and the Taxpayer Information Gateway (TIG) report titled MeF_DCS_8975_Form_1120-CbC_Report-Trends_and_Ratios ▪ Auditor's workbench version 9 and (Form 8975). − Consider the ratio analysis feature and how that can be used with the U.S. CbC Report. − Consider the Country code table and treaty rates feature and how that may be used with the CbC Report. − Consider how the Line Item report, query builder and pivot table features might be useful with the CbC Report. − The TIG Report titled MeF_DCS_8975_Form_1120-CbC_Report-Trends_and_Ratios provides the examiner with trends and ratios associated with the information the filer provided on Form 8975, Schedule A.	▪ Auditor's Workbench Version 9.5 User Guide & Tutorials ▪ Taxpayer Information Gateway (TIG) website – TIG Report Listing & Sample Sanitized Reports

Step 4: Consider Whether Penalties Apply

CbC Report in the Transfer Pricing Risk Analysis Process
Step 4
Consider whether penalties apply for failure to file or filing an incomplete Form 8975.

Considerations	Resources
Certain ultimate parent entities of a U.S. MNE group must file an annual return on Form 8975 subject to certain exceptions as specified under Treas. Reg. 1.6038-4. Form 8975 and Form 8975, Schedules A must be attached to a timely filed income tax return, including extensions. For example, in the case of a corporation, Form 8975 and Form 8975, Schedule A needs to be filed along with Form 1120. As part of the risk analysis process consider whether the ultimate parent entity of a U.S. MNE has met the filing requirement and if met, whether the form was complete. Failure to file or incomplete filing of Form 8975 and Form 8975, Schedule A may subject the taxpayer to penalties under IRC 6038(b). An ultimate parent entity of a U.S. MNE group is not required to report information on Form 8975 for the reporting period if the annual revenue of the U.S. MNE group for the immediately preceding reporting period was less than $850,000,000.	▪ Treas. Reg. 1.6038–4 - *Information Returns Required of Certain United States Persons with Respect to Such Person's U.S. Multinational Enterprise Group* ▪ Form 8975 Instructions ▪ Form 8975, Schedule A Instructions

Step 4: Consider Whether Penalties Apply (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 4

Considerations	Resources
Failure to file a U.S. CbC Report or filing a materially incomplete or inaccurate U.S. CbC Report with respect to foreign entities will suspend expiration of the statute of limitations on the entire income tax return, exposing the taxpayer to audit for any income tax issue for that taxable year, unless the taxpayer can establish the failure was due to reasonable cause. Inaccurate U.S. CbC Reports with respect to foreign constituent entities may also result in a penalty under IRC 6038(b). While no explicit penalty provision applies for inaccurate reporting of domestic constituent entities, tax returns are signed under penalty of perjury and, in the case of external return preparers, additional penalties may apply. The taxpayer is required to maintain records to support the information in the Form 8975 and Form 8975, Schedule A. As an examiner, you can request to review the source documentation if it relates to a tax issue. However, you should not audit the Form 8975.	

Step 4: Consider Whether Penalties Apply (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 4

Considerations	Resources
The penalty rules under IRC 6038 generally apply, including reasonable cause relief. Based on the outcomes of a jurisdiction's peer review conducted by the OECD, if there has been significant non-compliance by that jurisdiction's Competent Authority, certain actions may be taken at the intragovernmental level. In addition, in a case of the Form 8975 and Form 8975, Schedule A filed after the due date of the income tax return, a separate penalty may apply, irrespective of any tax due on Form 1120. Under IRC 6501(c)(8), the statute of limitations with respect to a tax return that requires filing of a CbC Report generally will not expire before the date which is three years after the CbC Report is filed. If the taxpayer establishes that the failure to file the CbC Report is due to reasonable cause and not willful neglect, the statute of limitations will not expire with respect to the item(s) related to the CbC Report before the date which is three years after the CbC Report is filed.	

Step 4: Consider Whether Penalties Apply (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 4

Considerations	Resources
Penalties should be considered whenever adjustments are made to a tax return. The determination whether to assert penalties, identify the appropriate penalties, and calculate the penalty amount accurately is primarily the issue team's responsibility and should take place throughout the examination process. Workpapers must support the analysis and conclusion. Issue teams should consult with LB&I Division Counsel and Associate Chief Counsel International (ACCI), as appropriate. Upon the approval of the manager for the assessment of a penalty, the examiner should follow the procedures for preparing a penalty case file.	

Step 5: Review Other Information

CbC Report in the Transfer Pricing Risk Analysis Process
Step 5
Review other information after indicators of a transfer pricing issue are identified.

Considerations	Resources
If the risk analysis performed in Steps 1 through 3 using the U.S. CbC Report provides indicators that a transfer pricing issue may be present, the next step is to review other sources of information in order to confirm a material transfer pricing risk exists. These sources include, but are not limited to, the following: ▪ Organizational Charts – Legal and Tax, ▪ General Ledger Systems – detail record of each financial transaction, ▪ Financial Reporting Systems – annual reports, ▪ Tax Reporting Systems – annual tax returns, ▪ Transfer Pricing Documentation. The U.S. CbC Report is not evidence by itself that a transfer pricing issue is present. Once further research is performed and a conclusion is reached that a transfer pricing risk exists, follow the guidance provided in IRM 4.61.3, Development of IRC 482 Cases, to complete the Execution and Resolution phase of the examination related to the tax issue.	

Step 5: Review Other Information (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 5

Considerations	Resources
This includes continuing to develop a comprehensive understanding of the taxpayer's operations and examining the controlled transaction that is at issue. Any proposed adjustment should be based on the arm's length principle and supported by appropriate documentation. The United States has committed to notify the other competent authority immediately of any cases of non-compliance with the Appropriate Use condition (See Explanation of Process). The United States will also promptly concede any competent authority proceeding that involves a tax adjustment using an income allocation formula based solely on the U.S. CbC Report information. In other words, you should not propose a transfer pricing adjustment to any taxpayer based on global formulary apportionment of income using the U.S. CbC Report data.	

Step 6: Confidentiality of the CbC Report

CbC Report in the Transfer Pricing Risk Analysis Process
Step 6
Comply with the confidentiality requirements of the CbC Report information.

Considerations	Resources
The information made available under the CbC Report is protected at three different levels: ▪ The information reported on Form 8975 and Form 8975, Schedule A is subject to the confidentiality protection of IRC 6103, which provides rules on the confidentiality and disclosure of returns and return information. ▪ The information is protected under IRC 6105, which provides rules on the confidentiality of information arising under treaty obligations. ▪ In addition to the relevant treaty provisions and applicable domestic law regarding protection of the CbC Report information exchanged, the information is also subject to the confidentiality provisions in the Competent Authority Arrangement between the jurisdictions. The information reported on the Form 8975 and Form 8975, Schedules A is return information and subject to the confidentiality protection of IRC 6103; however, U.S. parented MNE groups will not have the IRC 6103 protection with regard to the information they provide directly to a foreign tax administration in connection with a requirement to file CbC information locally in foreign jurisdictions in which they conduct business.	▪ IRC 6103 - *Confidentiality and Disclosure of Returns and Return Information* ▪ IRC 6105 - *Confidentiality of Information Arising Under Treaty Obligations*

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Step 6: Confidentiality of the CbC Report (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 6

Considerations	Resources
In general, information filed in foreign jurisdictions does not have IRC 6103 protection in the hands of the foreign tax administration, even if the same information is received by the United States under the information exchange provisions of the relevant treaty. Information that the United States receives under the treaty will be considered taxpayer information and will be protected under both IRC 6103 and IRC 6105. IRC 6105 provides that "tax convention information," or tax treaty information, is confidential and may not be disclosed unless an exception applies. For example, disclosure would be allowed to persons or authorities such as courts and administrative bodies that are entitled to such disclosure pursuant to a tax convention. Tax treaty information generally includes information the IRS receives from a foreign tax authority pursuant to a tax treaty. There are a few other exceptions under IRC 6105(b). Disclosures of information to, or received from, foreign tax authorities are governed by tax treaties, tax information exchange agreements (TIEAs), and provisions of the Internal Revenue Code.	▪ IRC 6105 - *Confidentiality of Information Arising Under Treaty Obligations* ▪ IRM 11.3.25.2 (07-23-2015) - *Information Received from Foreign Tax Authorities*

Step 6: Confidentiality of the CbC Report (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Step 6

Considerations	Resources
IRC 6103(e) provides that when the examiner receives a CbC Report through an exchange of information, upon written request from the taxpayer, the examination team can disclose such information to the taxpayer if the taxpayer is under examination and such disclosure does not seriously impair Federal tax administration (See IRC 6103(e)(7)). The future Practice Unit on Exchanged CbC Reports received from foreign jurisdictions will provide more information on this. In the case where the U.S. parented MNE group is doing business in a non-treaty country or in a country in which United States does not have a Tax Information Exchange Agreement, the CbC Report may be required to be filed directly with the local tax administration (local filing) and the information filed in that foreign jurisdiction is not protected under IRC 6103 or 6105. If the US-parented MNE is subject to mandated public disclosure of U.S. CbC Reports in a foreign jurisdiction, such information is not protected information. The BEPS Action 13 report provides that tax administrations should take all reasonable steps to ensure there is no public disclosure of confidential information in CbC Reports.	▪ IRM 10.5.1 - *IRS Privacy and Information Protection, Privacy Policy* ▪ IRS.gov - *Country-by-Country Reporting Guidance*

Step 6: Confidentiality of the CbC Report (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
[Step 6](#)

Considerations	Resources
Accordingly, the United States agreed to exchange information only if there is a CAA that is in force with the other tax jurisdiction. The exchange provisions in CAAs are based on either TIEAs or Double Tax Conventions. The United States will enter into CAAs with jurisdictions with which Treasury and the IRS have determined that automatic exchange of information is appropriate (Rev. Proc. 2020-15). To exchange the CbC Reports, the United States is in the process of negotiating bilateral competent authority agreements with certain of its Tax Treaty and Tax Information Exchange Agreement partners. The current list of U.S. bilateral CAAs can be found on the irs.gov CbC reporting page.	

Exceptions

CbC Report in the Transfer Pricing Risk Analysis Process
Description
Under the CbC reporting regulations, certain U.S. persons that are the ultimate parent of an MNE group with annual revenues for the preceding reporting period of less than $850,000,000 need not file the U.S. CbC Report. In response to national security concerns raised by large government contractor taxpayers and the Department of Defense (DoD), on March 30, 2018, the IRS published Notice 2018-31, IRB 2018-16, which designates a U.S. MNE group that earns more than half its revenue in the preceding reporting period from contracts with the DoD or other U.S. intelligence or security agencies as a "specified national security contractor." Specified national security contractors who would otherwise be required to file a complete U.S. CbC Report may instead report only global aggregated financial information in accordance with Notice 2018-31 and indicate, in Part II (Additional Information), that they are a specified national security contractor.

Definitions

CbC Report in the Transfer Pricing Risk Analysis Process
Description
▪ Constituent Entity (of the MNE Group) - i. Any separate business unit of an MNE group that is included in the Consolidated Financial Statements of the MNE group for financial reporting purposes, or would be so included if equity interests in such business unit of the MNE group were traded on a public securities exchange; ii. Any such business unit that is excluded from the MNE group's Consolidated Financial Statements solely on size or materiality grounds; and iii. Any permanent establishment of any separate business unit of the MNE group included in (i) or (ii) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes. https://www.oecd.org/ctp/transfer-pricing/beps-action-13-country-by-country-reporting-implementation-package.pdf ▪ Ultimate Parent Entity (UPE) - A constituent entity of an MNE group that: i. Owns directly or indirectly a sufficient interest in one or more other constituent entities of such MNE group such that it is required to prepare a consolidated financial statement under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of residence, and ii. There is no other constituent entity of such MNE group that owns directly or indirectly an interest described in (i) in the first mentioned constituent entity. In the United States, the accounting principles will be under GAAP. In the case of non-corporate and/or flow through entities, a detailed review of the organization chart is necessary to determine the UPE. ▪ Master File - In the Master File, the MNE should provide information on the overall MNE group describing the nature of its global business operations, its overall transfer pricing policies, and information on key value drivers, intangibles and the financing of the group. As a part of the Master File, taxpayers are also required to provide other tax information, such as consolidated financial statements of the MNE group, and provide information on key intra-group agreements. The information required in the Master File is broad in nature and intended to provide tax administrations with a high-level overview of the MNE group's transfer pricing practices in their global economic, legal, financial and tax context.

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Definitions (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
Description
▪ Local File - The Local File requires detailed information relating to specific transactions taking place between a local country affiliate and associated enterprises, including information on the identity of related parties, relevant financial information regarding those specific transactions, a comparability analysis and the selection and application of the most appropriate transfer pricing method. The information contained in this report should reflect the analysis, elements taken under consideration and sources of information used by the taxpayer to substantiate their application of the arm's length principle. The following categories of information are required in the Local File: information on the local entity; detailed information on each material category of controlled transactions in which the entity is involved, including a functional analysis of each, an indication of the most appropriate transfer pricing method (including which party is selected as the 'tested party') and the implementation of that method; and financial information. Some of the information to be provided in the Local File might be also contained in the Master File. In those cases, the guidance in the BEPS Action 13 Report recommends that the taxpayer should be allowed to cross reference the information to the Master File. ▪ Tax Jurisdiction - A country or a jurisdiction that is not a country but that has fiscal autonomy. For purposes of this U.S. CbC reporting, a U.S. territory or possession of the United States is considered to have fiscal autonomy. ▪ Base Erosion and Profit Shifting (BEPS) - Refers to the challenge faced by countries as "planning aimed at shifting profits in ways that erode the taxable base to locations where they are subject to a more favorable tax treatment." OECD.org: http://www.oecd.org/tax/beps/draft-toolkit-transfer-pricing-documentation-platform-for-collaboration-on-tax.pdf

Other Considerations / Impact to Audit

CbC Report in the Transfer Pricing Risk Analysis Process	
Considerations	**Resources**
▪ A Country-by-Country Report is available in the auditor’s workbench to analyze the Form 8975 information	▪ Auditors Workbench
▪ TIG Report that is available to analyze the Form 8975 information. It is titled, MeF_DCS_8975_Form 1120_CbC Report Trends and Ratios.	• Form8975 TIG Report
▪ Current updates on the OECD guidance and updates, available at OECD.org	▪ OECD.org - *Action 13 Country-by-Country Reporting*
▪ A schema is a data structure for electronically holding and transmitting information. XML, ‘extensible markup language’, is commonly used for this purpose. Examples are the OECD’s Common Reporting Standard XML Schema, the Unites States’ FATCA XML Schema and the European Union’s Fisc 153 format.	▪ OECD.org - *Country-by-Country Reporting XML Schema: User Guide for Tax Administrations*
▪ In order to facilitate the swift and uniform implementation of CbC reporting and with a view to accommodating the electronic preparation, filing and exchange of CbC Reports, the present CbC XML Schema and the related User Guide have been developed.	▪ OECD.org - *Country-by-Country Reporting XML Schema: User Guide for Tax Administrations*

Index of Referenced Resources

CbC Report in the Transfer Pricing Risk Analysis Process
IRC 482 - *Allocation of Income and Deductions Among Taxpayers*
IRC 6103 - *Confidentiality and Disclosure of Returns and Return Information*
IRC 6105 - *Confidentiality of Information Arising Under Treaty Obligations*
IRC 6662 - *Imposition of Accuracy-Related Penalty on Underpayments*
Treas. Reg. 1.6038-4 - *Information Returns Required of Certain United States Persons with Respect to Such Person's U.S. Multinational Enterprise Group*
Treas. Reg. 301-7701.2 through 7 - *Business Entities*
TD 9773 - *Country-by-Country Reporting*
Rev. Proc. 2017-23 - *Process for Filing Form 8975 and Accompanying Schedules A*
Notice 2018-31, IRB 2018-16 - *National Security Considerations with Respect to Country-by-Country Reporting*
Form 1120, Schedule M-3 - *Net Income (Loss) Reconciliation for Corporations With Total Assets of $10 Million or More*
Form 1120, Schedule UTP - *Uncertain Tax Position Statement*
Form 5471, Schedule M - *Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons*
Form 5472, Part IV - *Monetary Transactions Between Reporting Corporations and Foreign Related Party*
Form 8975 - *Country-by-Country Report*
Form 8975, Schedule A - *Tax Jurisdiction Information*
Form 8975 Instructions
Form 8975, Schedule A Instructions

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Index of Referenced Resources (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
IRM 4.46 - *LB&I Examination Process*
IRM 4.61.3 - *Development of IRC 482 Cases*
IRM 10.5.1 - *IRS Privacy and Information Protection, Privacy Policy*
IRM 11.3.25.2 (07-23-2015) - *Information Received from Foreign Tax Authorities*
Pub 5125 - *LB&I Examination Process*
Auditor's Workbench version 9 User Guide & Tutorials
Taxpayer Information Gateway (TIG) website – TIG Report Listing& Sample Sanitized Reports
Joint Committee on Taxation - *Background, Summary, and Implementations of the OECD/G20 Base Erosion and Profit Shifting Project*, JCX-139-15
OCED.org - *Country-by-Country Reporting - Handbook on Effective Implementation*
OCED.org - *Country-by-Country Reporting Handbook on Effective Tax Risk Assessment*
OCED.org - *Guidance on the Implementation of Country-by-Country Reporting*
U.S. Model Treaty, Art. 26
CbC Competent Authority Arrangement (CAA)
Tax Information Exchange Agreement (TIEA)
Frequently asked questions https://www.irs.gov/businesses/international-businesses/country-by-country-reporting-guidance

Index of Referenced Resources (cont'd)

CbC Report in the Transfer Pricing Risk Analysis Process
IRS.gov - *Country-by-Country Reporting Guidance*

Training and Additional Resources

CbC Report in the Transfer Pricing Risk Analysis Process	
Type of Resource	**Description(s)**
Saba Meeting Sessions	▪ *US Country by Country (CbC) Report in the Transfer Pricing Risk Analysis Process* – ITM 70488r
Other Training	▪ *Country-by-Country Report Training*, ITM 67517

Glossary of Terms and Acronyms

Term/Acronym	Definition
BEPS	Base Erosion and Profit Shifting
CAA	Competent Authority Arrangement
CbC	Country-by-Country Report
CFC	Controlled Foreign Corporation
DoD	Department of Defense
FATCA	Foreign Account Tax Compliance Act
FDAP	Fixed, Determinable, Annual or Periodic income
G20	Group of Twenty
GAAP	Generally Accepted Accounting Principles
IDR	Information Document Request
IP	Intellectual Property
IPS	International Practice Service unit
LB&I	Large Business and International
LLC	Limited Liability Company
MNE	Multinational Enterprise
OECD	Organisation for Economic Co-operation and Development
PCT	Platform Contribution Transaction

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Glossary of Terms and Acronyms (cont'd)

Term/Acronym	Definition
TIEA	Taxpayer Information Exchange Agreement
TIG	Taxpayer Information Gateway
U.K.	United Kingdom
UPE	Ultimate Parent Entity
U.S.	United States
UTP	Uncertain Tax Positions
XML	Extensible Markup Language

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Index of Related Practice Units

Associated UIL(s)	Related Practice Unit
9411	*Overview of IRC 482*