U.S.-U.K. Tax Planning: Coping With Uncertainty

Date: Wednesday, February 21, 2018
Time: 12:30 p.m.–2:00 p.m. (Light lunch served at 12:15 p.m.)
Location: New York Law School, W400
185 West Broadway, New York, NY 10013
RSVP: www.nyls.edu/taxRSVP
CLE: 1.5 credits in Areas of Professional Practice
(1 NY transitional and nontransitional)
Contact: ashley.oliver@nyls.edu • 212.431.2147

Panelists
Gary Ashford, Harbottle & Lewis LLP
Anne Fairpo, Temple Tax Chambers
Alev Fanny Karaman, LL.M. ’12, Ruchelman P.L.L.C.
Stanley C. Ruchelman, Ruchelman P.L.L.C.

Tax reform in the U.S., Brexit in the U.K., and the international efforts to fight base erosion and profit shifting are changing the tax landscape. The interaction of tax and business, which has never been wholly predictable, must now be considered even more carefully. The boundaries of acceptable behavior are shrinking, and the penalties and criminal sanctions for participation in international schemes are severe. The panelists will discuss how the new environment affects companies engaged in business between the U.S. and the U.K.—and the lawyers who advise them.
US-UK Tax Planning: Coping with Uncertainty

Anne Fairpo
Temple Tax Chambers
Overview (the view from London)

- UK uncertainty in anti-abuse provisions targeted at cross-border activities
  - Ignoring BEPS
    - diverted profits tax
    - digital economy withholding tax
  - More or less in line with BEPS
    - Controlled foreign companies
    - Transfer pricing
    - Multilateral instrument status
    - GAAR
- Brexit: stirring uncertainty for cross-border activities
  - Status of EU tax law post-Brexit
  - Likely effect of Brexit on UK taxes
UK current uncertainties
Diverted profits tax

- UK 25% additional tax on large companies
- Applies to:
  - Foreign company structuring to avoid a UK tax presence; or
  - UK company/PE creating a tax advantage by involving entities or transactions which lack economic substance
- Notification requirements at a much lower level than caught by actual charge
- Arguably unnecessary with BEPS changes but not being repealed
Digital economy taxation

December 2017 position paper

- Proposes a tax on UK sales of digitised services
  - Focused on online marketplace and exchange, and on businesses that leverage a user base to sell advertising
  - Turnover-based
- Also proposes a withholding tax on sales of products and services derived from IP which is owned in a low/no tax jurisdiction

Note that the EU is also considering a withholding tax on digital transactions, as is the OECD, together with other measures: the UK withholding tax proposal is intended as an interim measure whilst the OECD sorts itself out

- Already taxing (by way of withholding) royalties paid outside the UK for IP used by a UK PE
UK CFC rules

- Entity-based CFC regime
  - focused on profits artificially diverted from the UK
  - tests where assets and risks are managed, and ability of subsidiary to manage these
  - applies PE-type *significant people function* analysis to determine profits attributable
  - exemptions for excluded territories, low profits, reasonable tax
  - partial finance company exemption, based on debt-equity ratio and excess cash holdings (recently targeted by EC as illegal state aid)

- BEPS-compliant, no changes expected

- Note that UK corporate tax rate now means UK subsidiaries at risk of triggering CFC rules in Japan
Transfer pricing

- Broadly in line with OECD approach
- UK remains highly resistant to unilateral advance pricing agreements
- Also apparently highly resistant to litigating on transfer pricing
Multilateral instrument

- UK has opted out of the MLI provisions on permanent establishment
  - No specific requirement for specified functions to be preparatory or ancillary, although arguable that HMRC takes the view that wording not needed
  - DPT introduced to counter perceived PE avoidance; overlap potential exists as DPT unlikely to be withdrawn
- Also opted out of the limitation of benefits clause, relying on principle purpose test instead
  - Doesn’t affect treaties which already have an LoB (US, Japan)
General Anti-Abuse Rule

- OECD advocate GAARs to deal with avoidance/abuse in treaty contexts
- UK GAAR enacted in 2013
  - One ruling so far - purely domestic
  - Not broad spectrum, unlike others internationally (questionable whether meets OECD expectations)
  - Intended to deter highly artificial abusive arrangements involving “contrived and abusive” steps - little information on what that means
  - Likely focussed on substantial mismatches between tax and economic outcomes of transactions (arguable overlap with DPT)
Brexit uncertainties
Implications of Brexit result

- Limited immediate effect for tax - until EU membership is formally severed, remain within EU and subject to rules etc
- Untangling of laws will take time - for tax, principally on VAT
  - Note that VAT is very unlikely to go anywhere, given that it is a substantial source of revenue for the government
  - Legislation largely stand-alone implementation into domestic law
- State aid concerns might be removed
  - EU presently reviewing substantial parts of transfer pricing implementation in various countries, for example
- Social security agreements, tariffs etc will all need to be negotiated
Fallback to double tax agreements

- UK would exit Parent/Subsidiary Directive and Interest & Royalty Directive
  - Withholding taxes on group interest, dividend and royalty payments would fall back to any existing double tax agreements
    - Note: German and Italian tax treaties do not eliminate withholding tax on dividends from subsidiaries - as not subject to corporation tax in the UK, this is an absolute cost
    - Withholding on royalties paid to Luxembourg is 5%
  - Cross-border licensing and loans will need to be considered on a treaty-by-treaty basis
- Note EU social security agreement would also fall away
Impact on customs duties

- UK could remain within the EU customs union, as Turkey is
  - Seems very unlikely
- More likely to have some sort of trade agreement, with customs duties to/from EU (although note the Canadian trade deal took seven years to negotiate after twenty years of general discussion ...!)
- Fall-back would be WTO duties: not outrageous, but puts UK at a disadvantage with EU competitors when exporting to EU
  - Approximately 50% of UK exports are to the EU, but about 10% of EU exports are to the UK
- Increased compliance costs and processes inevitable
- EU customs agreements with non-EU countries will also fall away, leaving the UK potentially exposed and needing to negotiate new treaties (not a fast process)
Impact on VAT

- UK would leave EU scope of VAT
  - Unlikely to change substantially (accounts for 35% of UK tax take, and costs of changing the system radically would be high)
  - Import VAT on EU imports for businesses: recoverable, but cashflow cost
  - Direct effect of EU law would be removed
- Potential for more (lower) rates - extending zero rating, and 5% rate, for example, as no longer constrained by EU minimums
- Certain sectors will change substantially
  - Travel sector: TOMS could be removed
  - Suppliers of e-services to EU consumers will need to register in at least one EU state to access the EU MOSS
Options for corporation tax

- Potentially re-introduction of tax rules held contrary to EU law
- But: potential for stricter anti-avoidance measures against UK businesses in EU countries (eg: where exemptions are limited to EU countries)
- If no longer subject to state aid, government has more scope for changing the corporation tax regime (subject to WTO measures; if part of EEA, remains with scope of EU state aid rules)
- Proposed reduction to 17% in 2020 was repeated in the November 2017 Budget and likely to go ahead, especially given US tax rate reduction
Practicalities

- UK law likely to look still European-influenced for a long time after Brexit
  - A few tweaks likely on VAT rates, and in some areas of corporation tax where UK has been forced to follow EU rules
- But: companies looking to trade in the EU still have to comply with EU laws such as EU competition rules, regulations and standards
  - Impact and effect therefore likely to continue: EU is 50% of UK’s export market (at the moment ...)
- Any transition period will require UK to follow EU directives, regulations and case law
Coping with Brexit uncertainties

- Implementation
  - Contract review - existing, and in negotiating new
    - Territory definition (should not be just “EU”)
    - Avoid assumption of single market (particularly for regulatory points, consumer law etc)
    - Force majeure - when does it trigger?
  - Dispute resolution - arbitration likely to be more flexible than immediate litigation
  - Who bears the costs of unanticipated Brexit issues?

Anne Fairpo - February 2018
US-UK Tax Planning: Coping with Uncertainty
Developments in UK Criminal and Civil Tax Penalties

Gary Ashford
Partner (Non Lawyer)
CTA Fellow, TEP, ATT
February 2018
Schedule

- Recent Offshore Developments
  - Failure to Prevent Facilitation of Tax Evasion
  - Strict liability personal criminal offence
  - Asset Based Penalties
  - Corporate Criminal Offence
  - Requirement to Correct

- Recent Avoidance Developments
Failure to Prevent Facilitation of Tax Evasion

- Part 3 Criminal Finances Act 17
- Effective from 30 September 2017
- Two Offences
  - Failure to Prevent Facilitation of UK Tax Evasion
  - Failure to Prevent Facilitation of Foreign Tax Evasion
Failure to Prevent Facilitation of UK Tax Evasion

Failure to Prevent Facilitation of UK tax evasion

A relevant body (B) is guilty of an offence if
- a person commits a UK tax evasion facilitation offence when acting in the capacity of a person associated with B
Failure to Prevent Facilitation of Foreign Tax Evasion

A relevant body (B) is guilty of an offence if
- a person commits a foreign tax evasion facilitation offence when acting in the capacity of a person associated with B; and either
  - B is a body incorporated, or a partnership formed, under the law of any part of the United Kingdom;
  - B carries on business or part of a business in the United Kingdom;
  - Any conduct constituting foreign tax evasion facilitation takes place in the United Kingdom.
Failure to Prevent Facilitation of Tax Evasion

— Tax Evasion Facilitation means an offence under the law of any part of the United Kingdom consisting of
  
  — being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax by another person,
  
  — aiding, abetting, counselling or procuring the commission of a UK tax evasion offence, or
  
  — being involved in the commission of an offence consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax
Failure to Prevent Facilitation of Tax Evasion

— Foreign Tax Evasion Facilitation means conduct which—
  — amounts to an offence under the law of a foreign country;

— relates to the commission by another person of a foreign tax evasion offence under that law; and

— would, if the foreign tax evasion offence were a UK tax evasion offence, amount to a UK tax evasion facilitation offence
Failure to Prevent Facilitation of Tax Evasion

- A relevant body guilty of an offence under this section is liable—
  - on conviction on indictment, to a fine,
  - on summary conviction in England and Wales, to a fine,
  - on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum

It is a defence for B to prove that B had in place such prevention procedures as was reasonable, or it was not reasonable to expect B to have any prevention procedures in place
Failure to Prevent Facilitation of Tax Evasion

- HMRC draft guidance designed to be of general application and is formulated around six guiding principles:
  - Risk assessment
  - Proportionality of risk-based prevention procedures
  - Top level commitment
  - Due diligence
  - Communication (including training)
  - Monitoring and review
Penalties for Enablers of Defeated Tax Avoidance

Where a person has entered into abusive tax arrangements, and incurs a defeat in respect of the arrangements, a penalty is payable by each person who enabled the arrangements.

[Tax avoidance] arrangements are where having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage was the main purpose, or one of the main purposes, of the arrangements.

Tax [avoidance] abusive arrangements are where the entering into or carrying out the arrangements cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions, having regard to all the circumstances.
Penalties for Enablers of Defeated Tax Avoidance

A “defeat” takes place where either

T has given HMRC a document on the basis of a tax advantage from the arrangements, and the relevant tax advantage has been counteracted, and the counteraction is final, or

HMRC have made an assessment to counteract the tax advantage that it is reasonable to assume T expected to obtain from the arrangements concerned, and the counteraction is final.
Penalties for Enablers of Defeated Tax Avoidance

• The penalty is the total value of the relevant consideration received by the enabler

• A penalty cannot be imposed without a final decision or an opinion of the GAAR Advisory Panel
Strict Liability Personal Criminal Offence

- S166 FA 16
- A person who is required to:
  - give notice of being chargeable to income tax or capital gains tax
  - to make and deliver a return

- commits an offence if......by reference to offshore income, assets or activities [Absence of Mens Rea]

- It is a defence for a person accused of an offence under this section to prove that the person had a reasonable excuse

- Threshold is to be not less than £25,000

- The offence from any jurisdiction signed up to CRS- USA?

- The offence became live in November 2017
Offences relating to offshore income, assets and activities

— A person guilty of an offence is liable on summary conviction—

— in England and Wales, to a fine or to imprisonment for a term not exceeding 51 weeks or to both, and

— in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both.

— It is a defence for a person accused of an offence under this section to prove that the person had a reasonable excuse
Civil Penalty for “enablers”

- s162 FA 16
- A penalty is payable by a person (P) who has enabled another person (Q) to carry out offshore tax evasion or non-compliance, where conditions A and B are met

- Condition A is that P knew when P’s actions were carried out that they enabled, or were likely to enable, Q to carry out offshore tax evasion or non-compliance

- Condition B is that—
  - Q has been convicted of the offence, or
  - Q is liable to an Offshore penalty

- P “has enabled” Q to carry out offshore tax evasion if they have encouraged, assisted or otherwise facilitated conduct that constitutes offshore tax evasion or non-compliance
Civil Penalty for “enablers”

Penalties

- The penalty payable is the higher of—
  - 100% of the potential lost revenue, or
  - £3,000

- Reduction in penalties if P makes a disclosure to HMRC
Requirement to Correct Offence

- S67 FA 17 (2)

- A penalty is payable by a person who—
  
  - at the end of the tax year 2016-17 has any relevant offshore tax non-compliance to correct, and

  - fails to correct the relevant offshore tax non-compliance within the period beginning with 6 April 2017 and ending with 30 September 2018.
Requirement to Correct Offence

RTC penalty
- Minimum 100% Max 200% (reduced from maximum downwards for disclosure and cooperation)
- 10% asset based penalty (where tax is over £25,000)
- 50% Move penalty where action taken to avoid CRS
- Publish Deliberate defaulters regime (Naming and Shaming)
s97 & Sch 24, FA 2007 General Penalties

Offshore Income – s35 & Sch 10 FA 2010
Income tax and capital gains

Mistake despite reasonable care
Failure to take reasonable care
Deliberate understatement
Deliberate understatement and concealment
Offshore Penalty Regime - s97 & Sch 24, FA 2007, offshore penalties, category 3

Offshore Income – s35 & Sch 10 FA 2010
Income tax and capital gains

- 0% min unprompted
- 30% min prompted
- 60% max
- 140% max
- 70% min prompted
- 40% min unprompted
- 100% min prompted
- 200% max
- 60% min unprompted

Mistake despite reasonable care
Failure to take reasonable care
Deliberate understatement
Deliberate understatement and concealment
Categories for offshore penalties
Reduction- Sample territories offences post 24 July 2013

Category 1
- EU, Guernsey, IOM, Cayman, US, Switzerland, Liechtenstein

Category 2
- Jersey, BVI, Bermuda, Bahamas, US overseas territories

Category 3
- Panama, UAE, Monaco
Publishing Names of Deliberate Defaulters s94 FA 2009

- Cases settled on or after 1st April 2010
- Must be: tax lost £25,000 or more
  “deliberate” and “deliberate and concealed” cases
  failed to disclose during compliance check
  Did not obtain full reduction for quality of disclosure
- If disclose - exempted
- Three lists published to date
Offshore Move Penalties
Schedule 21 FA 2015

- A relevant offshore asset move occurs if an asset ..... moves from a specified to a non-specified territory, or if there is a change in the ownership arrangements of an asset which results in the beneficial owner prior to the move remaining the beneficial owner afterwards.

- Applies to relevant asset moves that take place after 26 March 2015

- Income tax, CGT and IHT

- Additional 50% on top of inaccuracy penalty
U.S. – U.K. TAX PLANNING: 
COPING WITH UNCERTAINTY

IMPLEMENTING B.E.P.S. UNDER U.S. TAX LAWS
AND OTHER PROVISIONS

Stanley C. Ruchelman
Fanny Karaman

Ruchelman P.L.L.C.
New York, NY
Introduction

- B.E.P.S. is the O.E.C.D. project to deter tax base erosion and profit shifting from high tax jurisdictions to low tax jurisdictions

- In October 2015, the B.E.P.S. project culminated in 15 reports designed to achieve three broad objectives
  - Coherence in the application of tax law
    - The goal being the avoidance of double non-taxation
  - Substance in structures
    - The goal is to prevent name plate companies in low tax jurisdictions from being allocated most of the profits
  - Transparency
    - All cards are played face up on the table
Introduction

• The U.S. has adopted several B.E.P.S. recommendations
  • Limit on Deduction of Interest Expenses and the Fight Against Base Erosion
  • G.I.L.T.I. and the Fight Against Innovation Box Regimes
  • Hybrid Payments and the Fight Against Double Nontaxation
  • CbC Reporting and Beneficial Ownership Transparency
Limit on Deduction of Interest Expense

The Fight Against Base Erosion
Limit on Deduction for Business Interest Expense

• Prior Law (Prior Code §163(j))
  • “Earnings Stripping” rule for interest paid to related parties or to lenders under loans guaranteed by related parties
  • Cap on related party net interest deduction imposed for “disqualified interest” payments

• Payor Corporations Subject to cap if:
  • Payor’s debt-to-equity ratio > 1.5 : 1.0
  • Payor’s net interest expense > 50% of essentially E.B.I.T.D.A.

• “Disqualified Interest” summarized:
  • Interest paid or accrued to related parties outside the U.S. that were not subject to full WHT
  • Interest paid or accrued to unrelated parties when the obligations was guaranteed or supported by a related party
Limit on Deduction for Business Interest Expense

- T.J.C.A. (Amended Code §163(j))
  - Broader in scope than prior law
    - Not limited to related interest paid to related parties
    - Prevents deductions for interest expense deemed to be excessive
    - Moves away from debt : equity ratio
    - Relies on E.B.I.T.D.A. cap initially and then to an E.B.I.T. cap in 3 years
  - Exceptions:
    - Average annual gross receipts not in excess of $25 Million over the last 3 years
    - Individuals in the trade or business of performing services as an employee
    - Real property trade or business electing out of the rule
    - A farming business electing out of rule
    - Certain public utilities that furnish or sell (i) electrical energy, water, or sewage disposal services, (ii) gas or steam through a local distribution system, or (iii) transportation of gas or steam by pipeline
Limit on Deduction for Business Interest Expense

- T.J.C.A. (Amended Code §163(j))

- Limitation is the sum of:
  - Business interest income
  - 30% of adjusted taxable income
  - Floor plan financing interest on loans used to finance motor vehicle inventory for a dealer

- Unlimited carryforward with restrictions for partnerships
Limit on Deduction for Business Interest Expense

• T.J.C.A. (Amended Code §163(j))
  • Business interest income:
    • Interest includible in taxpayer’s gross income properly allocable to a trade or business
    • Interest paid or accrued on indebtedness allocable to property held for investment is not covered
  • Specific rules apply to partnerships to avoid double dipping by partners
    • Limitation is computed at partnership level
    • Adjusted taxable income of partner does not include distributive share of non-separately stated partnership income
    • Excess limitation at partnership level is allocated among partners
G.I.L.T.I.

The Fight Against Innovation Box Regimes
G.I.L.T.I.

• Code §951A
• G.I.L.T.I. = Global Intangible Low-Taxed Income
• Affected Taxpayers:
  • U.S. shareholders of C.F.C.’s
  • “U.S. Shareholder” now determined by 10% of vote or value
• Consequence to U.S. Shareholders:
  • Individual and Corporate U.S. shareholders: G.I.L.T.I. inclusion in taxable income
  • In general, only corporate shareholders are entitled to a deduction (Code §250(a)(1))
  • Special treatment for individuals making a Code §962 election
G.I.L.T.I.

S/H's aggregate pro rata share of tested income of each C.F.C. in which S/H is a U.S. S/H/

Tested income of a C.F.C.

the deductions (including taxes) allocable to the above

gross income determined without regard to:
1. income described in Section 952(b) (i.e. Subpart F income from U.S. sources and ECIwUSTB)
2. gross income taken into account in determining Subpart F income of such corporation
3. gross income excluded from foreign base company income and insurance income by reason of Section 954(b)(4) (i.e. high foreign tax exclusion)
4. dividend received from a related person
5. any foreign oil and gas extraction income

S/H's aggregate pro rata share of tested losses of each C.F.C. in which is a U.S. S/H

Tested losses of a C.F.C.

the deductions (including taxes) allocable to the below

gross income determined without regard to:
1. income described in Section 952(b) (i.e. Subpart F income from U.S. sources and ECIwUSTB)
2. gross income taken into account in determining Subpart F income of such corporation
3. gross income excluded from foreign base company income and insurance income by reason of Section 954(b)(4) (i.e. high foreign tax exclusion)
4. dividend received from a related person
5. any foreign oil and gas extraction income

= 10 percent of the aggregate pro-rata share of QBAI of each CFC

amount of interest expense taken into account under 951A(c)(2)(A)(ii) (i.e. interest that is deductible for tested gross income purposes)

S/H's net deemed tangible income return

G.I.L.T.I.
G.I.L.T.I.

Qualified Business Asset Investment (QBAI)

- average of aggregate adjusted bases
- in specified tangible property
- used in TB
- and of a type allowing 167 deduction
- determined as of the close of each quarter

Essentially, property, plant and equipment not giving rise these items excluded from gross income

- any tangible property
- used in the production
- of tested income

Gross income determined without regard to:

1. income described in Section 952(b) (i.e. Subpart F income from U.S. sources and ECIwUSTB)
2. gross income taken into account in determining Subpart F income of such corporation
3. gross income excluded from foreign base company income and insurance income by reason of Section 954(b)(4) (i.e. high foreign tax exclusion)
4. dividend received from a related person
5. any foreign oil and gas extraction income

the deductions (including taxes) allocable to the above
Hybrid Payments

The Fight Against Double Nontaxation
Hybrid Payments

- Code § 245A – D.R.D. allowed for dividend payments received by U.S. corporation from a ≥10% owned foreign corporation
- A dividend from a foreign corporation benefits from D.R.D. when:
  - Received from a ≥10-percent owned foreign corporation
  - By a domestic corporation
  - That is a “United States shareholder” in the foreign corporation
  - But only for the foreign-source portion of such dividend
  - And only if the payor does not deduct the dividend paid
  - And only if the payor is not a P.F.I.C.
- Deemed paid credit eliminated
- Post 1986 pool of E&P is eliminated by the Code §965 inclusion
- No foreign tax credit allowed for withholding tax
Hybrid Payments

- Receipt of dividend on common stock
  - Not Deductible for payor in Luxembourg
  - Dividend is deductible under Code §245A

- Receipt of C-PEC distribution
  - Deductible for payor in Luxembourg
  - Not deductible under Code §245A(e)
Hybrid Payments

• Code §267A – deduction disallowed for certain hybrid payments made from U.S.
  • Disallows deduction for Disqualified Related Party Amount
    • Paid or Accrued pursuant to a hybrid transaction, or
    • Paid or accrued by, or to, a hybrid entity
  • “Disqualified Related Party Amount”:
    • Interest or royalty paid or accrued to a related party if
      • Not included in income of related party, or
      • Related party can deduct amount
    • Exception: subpart F inclusion in the hands of a U.S. shareholder under Code §951(a)
Hybrid Payments

• Code §267A

  • “Related Party”:
    • An individual, corporation, trust, or estate which controls, or is controlled by, the payor or
    • A corporation, partnership, trust, or estate which is controlled by the same person/persons which control the payor

  • “Control”:
    • Corporation: Direct or indirect ownership of more than 50% (vote or value)
    • Partnership, trust, estate: Direct or indirect ownership of more than 50% by value of beneficial interest therein

• Code §958 attribution rules apply
Hybrid Payments

• Code §267A
  • Hybrid Transaction:
    • Payment of interest or royalty from a U.S. person, but the receipt of payment is not taxable in foreign country or the recipient is entitled to a deduction
  • Hybrid entity:
    • Treated as fiscally transparent in the U.S. but not for purposes of foreign country, or
    • Treated as fiscally transparent in foreign country but not in the U.S.
    • Proposed Regs to be issued by year end with final Regs. by June 2019
Hybrid Payments

- Foreign Co and Foreign Sub formed in Country C
- In Country A, U.S.L.P. is treated as a partnership
- Under Country C tax law, partners cannot do business with themselves
- Transactions between partners and partnership are eliminated

- In U.S. the L.P. elected to be treated as a corporation
- Interest is a hybrid payment
CbC Reporting

Beneficial Ownership Transparency
CbC Reporting

- Treas. Reg. §1.6038-4
- Applies to ultimate U.S. parent entity of a multinational enterprise group that has annual revenue in preceding accounting period of ≥$850 Million
- Must file Form 8975 (Country-by-Country Report)
CbC Reporting

Form 8975
Country-by-Country Report

For reporting period beginning ___________________________ , 20 __________ , and ending ___________________________ , 20 __________

For information about Form 8975 and its separate instructions is at www.irs.gov/form8975.

If this is an amended report, check here □

Part I Identification of Filer

1a Name of the reporting entity

1b Reporting role code

1c EIN

2 Number, street, and room or suite no. (If P.O. box, see instructions)

3a City or town

3b State or province

3c Country, and ZIP or foreign postal code

Part II Additional Information

Enter any additional information related to the multinational enterprise group.

For Paperwork Reduction Act Notice, see separate instructions.
# CbC Reporting

## Tax Jurisdiction and Constituent Entity Information

**Part I: Tax Jurisdiction Information.** All financial amounts must be stated in U.S. dollars. See instructions.

<table>
<thead>
<tr>
<th>Revenues</th>
<th>Profit (loss) before income tax</th>
<th>Income tax paid (on cash basis)</th>
<th>Income tax accrued – current year</th>
<th>Stated capital</th>
<th>Accumulated earnings</th>
<th>Number of employees</th>
<th>Tangible assets other than cash and cash equivalents</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Unrelated party</td>
<td>(b) Related party</td>
<td>(c) Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## Part II: Constituent Entity Information

1. Constituent entities resident in the tax jurisdiction
2. TIN
3. Tax jurisdiction of organization or incorporation if different from tax jurisdiction of residence
   - Activity code
   - If you entered the code for "Other," describe the business activity
4. Main business activities

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For Paperwork Reduction Act Notice, see separate instructions.
CbC Reporting

Schedule A (Form 8975) (6-2017)

Part II Constituent Entity Information (continued)

<table>
<thead>
<tr>
<th>1. Constituent entities resident in the tax jurisdiction</th>
<th>2. TIN</th>
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<th>4. Main business activities</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(a) Activity code</td>
<td>(b) If you entered the code for “Other,” describe the business activity</td>
</tr>
</tbody>
</table>

Part III Additional Information

Enter any additional information related to the information reported in Part I and II.
CbC Reporting

- Two tables of data to report

1. Report by jurisdiction
   - Revenue
   - Profit, accumulated earnings
   - Tax paid and accrued
   - Stated capital, tangible assets (other than cash)
   - Employee count

2. Report by entity by jurisdiction
   - Jurisdiction of organization, tax jurisdiction of residence
   - Main business activities (12 categories plus ‘Other’)

CbC Reporting

- The goals
  - Promote consistency of reporting obligations across tax jurisdictions
  - Reduce the risk that other countries will depart from the agreed standard
  - Achieve a balance of benefits to tax administrations and the compliance costs and burdens for MNE groups
  - The reported information may be used only for assessing high-level transfer pricing and other tax risks and, where appropriate, for economic and statistical analysis
CbC Reporting

• Exchange of information
  • Reports may be exchanged with tax authorities in other countries pursuant to bilateral agreement
  • The parent company of the MNE group prepares the CbC report and files it with the tax authority of its home jurisdiction
  • CbC reports prepared by non-U.S. based MNE groups will be furnished to the I.R.S.
  • I.R.S. expects that the reports will enable it to perform high-level transfer pricing risk identification and assessment of issues
  • This is consistent with recently announced audit plan guidelines applicable to the examination of an MNE
## CbC Reporting

- **Countries approved for CbC exchanges of information***

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* As of February 7, 2018.
Important Notice

This presentation is not intended to be legal advice. Reading these materials does not create an attorney-client relationship. The outcome of each case stands on its own merits.
SPEAKER BIOGRAPHIES
Gary Ashford is a Partner in the Private Capital group. He advises high-net-worth individuals, trusts and corporate clients on a range of complex and contentious tax matters.

Gary entered the profession in 1999 having spent 17 years with HM Revenue and Customs where he was a Corporate Tax Inspector within a team of corporate and employment tax investigators. He was recruited by Ernst & Young, working within their London tax risk and investigations team, latterly within their Financial Services office. Gary then joined Grant Thornton and became the Head of Tax Investigation for Central England. Gary then joined RSM Tenon where he was a Partner, National Head of Tax Investigations for four years before joining Kinetic Partners, a boutique firm working in the alternative investment management industry as Tax Partner. Gary is part Chairman of the Chartered Institute of Taxation’s (CIOT) Management of Taxes Technical Sub Committee and sits on CIOT’s Council, the CIOT’s governing body and the Professional Standards Committee. Gary is also author of Bloomsbury’s Serious Tax Investigations chapters. Gary represents the CIOT on the General Assembly and Professional Affairs Committee of the Confederation Fiscale Européenne, the association within Europe for Qualified Tax Advisers.

Gary is an expert in contentious tax matters including serious fraud and avoidance matters. Over the years he has handled many high-profile investigations and disputes in various locations involving criminal investigations, Codes of Practice 9 and 8 and various Tax scheme assignments involving Special Investigations and the Anti Avoidance Group (AAG).

Areas of specialism:

- UK and Offshore tax matters
- HMRC enquiries and tax disclosures
- Non-domicile tax planning
- Code of Practice 8 and 9 (COP8 and COP9) and criminal investigations
- Developments in global transparency
- Various FATCA, inter-governmental agreements
- Corporate tax structuring and re-structuring
- Employment taxes and VAT.
ANNE FAIRPO MA(Oxon), CTA (Fellow), Barrister

Anne Fairpo is a barrister at Temple Tax Chambers, specialising in tax law. She is also part-time judge in the First Tier Tax Tribunal, a former President of the Chartered Institute of Taxation and is a lecturer in tax law at Queen Mary University, London and visiting fellow at Bournemouth University. She is also a PhD candidate at the Institute of Advanced Legal Studies, University of London.

Anne was called to the English Bar in 2009 after 15 years as a solicitor; her experience and expertise covers UK and international corporate tax planning and disputes, acting for a range of clients from small owner-managed businesses to listed multinationals. Anne also has a particular interest in intellectual property taxation and UK-US cross-border tax planning, with regard to both direct and indirect tax matters.

Publications include:
* Revenue Law: Principles and Practice*, Bloomsbury Professional (now in 35th edition, general editor)

Contributor to:
* British Master Tax Guide*, CCH, contributing editor, 2010-present
* Copinger on Copyright*, Sweet & Maxwell, tax editor, 2010-present
* Tolley’s Tax Planning*, Taxation of intellectual property chapter, 2002-present


Conference papers include:
* Cambridge Tax Policy Conference*: discussant on paper regarding New Zealand tax administration
* AOTCA, Taipei*: BEPS proposals and the implications for Asia/Australasia
* New York State Bar Association, International Section*: EU tax incentives for IP
* International Bar Association*: UK patent box and IP tax in the light of BEPS
* American Bar Association*: European IP incentives and the impact of BEPS
* IBC*: Taxing virtual currencies
ALEV FANNY KARAMAN is a French avocat à la cour and U.S. tax lawyer concentrating her practice in the areas of U.S. and international taxation with a focus on cross-border issues in France and the U.S. Ms. Karaman regularly advises entities and individuals on taxation of U.S. and European investments, estate and gift tax exposures, and corporate structuring with an emphasis on the treatment of French holdings under U.S. tax law.

Language proficiency in French and German facilitates the major aspects of her practice. Ms. Karaman practiced in Paris with small and mid-size international law firms advising on French-U.S. tax issues and with a boutique New York firm focusing on U.S.-German tax issues.

Ms. Karaman received her LL.M. in Taxation from New York Law School. She also holds a Licence en Droit and Master II en Droit Fiscal des Affaires (the French equivalents of the J.D. and LL.M. in Taxation) from Université de Rennes 1 Law School. She is active in the French-American Bar Association.

Education
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Avocat à la Cour, France - 2016

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STANLEY C. RUCHELMAN concentrates his practice in the area of tax planning for transnational business operations, with emphasis on intercompany transactions. Mr. Ruchelman represents companies in matters involving the I.R.S. and counsels corporate clients on transfer pricing issues and worldwide reorganizations. He advises foreign private clients on structuring investments in the United States. Mr. Ruchelman has authored numerous monographs on international taxation for a variety of publications and treatises. In addition, Mr. Ruchelman is a frequent lecturer on that subject, having spoken at conferences sponsored by, inter alia, the Practicing Law Institute, New York University Tax Institute, the American Bar Association, the International Bar Association, and the International Fiscal Association.

Mr. Ruchelman was an international tax partner at one of the major international accounting firms, where he practiced for eight years representing clients involved in cross-border trade and investment. Mr. Ruchelman was a Senior Attorney in the Legislation & Regulations Division of the Office of Chief Counsel, Internal Revenue Service, where he participated in the negotiation of income tax treaties and the development of legislative and regulatory policy affecting international business. Prior to that, Mr. Ruchelman was an Attorney Adviser to the Honorable Charles R. Simpson, Judge of the U.S. Tax Court.

Mr. Ruchelman is a fellow of the American Bar Foundation and of the American College of Tax Counsel. He is a former Chair of the Committee on U.S. Activities of Foreigners and Tax Treaties, Section of Taxation, American Bar Association and the International Tax Committee, Section of International Law and Practice, American Bar Association. Mr. Ruchelman served on the National Council of the International Fiscal Association - U.S.A. Branch. He was an adjunct professor in the Tax LL.M. program at New York Law School.

Education
George Washington University - J.D., with honors (1972)
Brooklyn College of the City University of New York - B.A. (1968)

Bar Admissions
New York Bar - 1986
District of Columbia Bar - 1973

Languages
English