

March 6, 2023

**Andres Garcia,
Internal Revenue Service
Room 6526,
1111 Constitution Avenue NW,
Washington, DC 20224**

Submitted electronically via pra.comments@irs.gov

RE: Proposed Collection; Requesting Comments on Form 8975 and Schedule A (Form 8975)

OMB Control No. 1545–2272

Mr. Garcia,

This letter responds to the request for comment from the Internal Revenue Service (IRS) on proposed and/or continuing information collections on Form 8975, Country-by-Country Report, and Schedule A (Form 8975),¹ Tax Jurisdiction and Constituent Entity Information.²

The Financial Accountability and Corporate Transparency (FACT) Coalition commends the IRS for its ongoing efforts to collect country-by-country reporting on Form 8975 and its aggregation and publication of related information.³ The FACT Coalition supports the continuing collection of this information as the tax enforcement reasons for collecting this information have not changed since collection began pursuant to 2016 regulations requiring country-by-country reporting.⁴ In fact, the reasons for collecting this information have only grown as: (i) the information collected from Form 8975 has proven useful in U.S. tax enforcement; (ii) multinational tax avoidance continues to be a challenge for the IRS and other competent tax authorities that can only be addressed by information gathering and exchange; and (iii) recent international tax reform efforts will also require increased coordination between the IRS and our international partners, such as is facilitated by Form 8975.

Accordingly, this letter encourages the IRS to confirm that it will continue collecting country-by-country reporting information on Form 8975 and timely and completely publish aggregated results. We also encourage the IRS to reconsider the overly broad national security exemption created by the prior administration and ask the IRS and Treasury to make clear the

¹ For purposes of this comment Form 8975, Country-by-Country Report, and Schedule A (Form 8975) will be referred to collectively as “Form 8975.”

² Internal Revenue Service (IRS), “Proposed Collection; Requesting Comments on Form 8975 and Schedule A (Form 8975),” 88 FR 910, OMB Control No. 1545-2272 (Jan. 5, 2023).

³ See, e.g., IRS, SOI Tax Stats - Country by Country Report (last updated Jun. 2022), <https://www.irs.gov/statistics/soi-tax-stats-country-by-country-report>.

⁴ See Treas. Reg. 1.6038-4.

ways that the information gathered from Form 8975 has, in fact, been helpful to the IRS, or to state what additional information would be useful to them in any final guidance resulting from this solicitation for comment.

The FACT Coalition submits this comment as a non-partisan alliance of more than 100 state, national, and international organizations working toward a fair tax system that addresses the challenges of a global economy and promoting policies to combat the harmful impacts of corrupt financial practices.

I. The Reasons for Requiring Information Reporting Pursuant to Form 8975 Have Only Been Made More Clear

In promulgating Treasury Regulations section 1.6038-4 and accompanying country-by-country reporting on Form 8975, the IRS confirmed that the information collected would assist with: improved enforcement of Federal tax laws; improved coordination with international partner competent tax authorities in addressing a collective action problem relating to multinational tax dodging; and clarify reporting obligation for U.S. multinational enterprises that may otherwise be required to file this information with foreign competent authorities if the IRS did not require the information reporting.⁵ Each of these compelling reasons remains unchanged, justifying continued country-by-country reporting. In fact, the case for country-by-country reporting has only been made more clear in recent years in light of information gathered on Form 8975 and international tax reform efforts.

A. Form 8975 Helps Address a Federal Tax Enforcement Problem that Should Be Prioritized

Even with long overdue funding increases to the IRS, it is apparent that federal tax enforcement of multinational tax practices requires taking advantage of well-tailored information reporting regimes like Form 8975. The transformation to a truly digital global economy across all sectors has resulted in highly mobile profits tied to intangible property and other readily moved services that allow for significant and aggressive tax planning by U.S. and foreign multinationals. Tax dodging by U.S. and foreign multinationals continues to undermine the U.S. tax system, as well as that of our international allies, costing global governments hundreds of billions of dollars annually.⁶

In the U.S. alone, the U.S. Treasury may be losing between \$70 and \$100 billion per year due to profit shifting practices of MNEs.⁷ In the United States, the share of foreign profits

⁵ See T.D. 9773; 81 F.R. 42482-42491 (Jun. 30, 2016)(promulgating final country-by-country reporting requirements); REG-109822-15; 80 F.R. 79795-79803 (Dec. 15, 2015) (proposing country-by-country reporting).

⁶ See Organization for Economic Cooperation and Development (OECD), International collaboration to end tax avoidance (accessed Feb. 17, 2023), <https://www.oecd.org/tax/beps/>.

⁷ Kimberly Clausing, “Five Lessons on Profit Shifting from the U.S. Country by Country Data,” Tax Notes Federal 169(9), (p. 925-940), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3736287.

for U.S. multinationals booked to tax havens rose from 25 to more than 40 percent from 2010 to 2018.⁸ Profit-shifting by U.S. multinationals impacts the tax base of the United States and our allies as profits may be moved away from the United States or our higher tax partners to tax havens; similarly, profit shifting by foreign multinationals operating in the United States may do the same.⁹

Country-by-country reporting improves the ability for the IRS to engage in federal tax enforcement. The ability for multinationals to take advantage of a complex web of international tax laws to improperly lower or evade U.S. taxation begins with an information asymmetry: multinationals have access to information regarding the entirety of their global tax footprint, and historically, the United States had more limited information. Even with prior reporting obligations covering much of the offshore activity relating to controlled foreign corporations, incremental non-overlapping information gathered pursuant to Form 8975 has clearly demonstrated that country-by-country reporting is a valuable tool for the IRS in multinational tax enforcement.¹⁰

Focusing on multinational tax compliance must continue to be prioritized by the IRS, consistent with the priorities identified in connection with better funding the IRS pursuant to the Inflation Reduction Act (P.L. 117-169). Long overdue IRS funding requires investment in tax enforcement efforts, and it has been made clear that this funding should address perpetual inequities caused by underfunding tax enforcement efforts in recent years.¹¹ Based on stock ownership of U.S. corporations, focusing on multinational tax compliance is one important means of satisfying these priorities.¹²

Therefore, the initial justification for Form 8975 reporting as it relates to improving federal tax enforcement efforts has not only remained true, but been made clear by initial reporting results.

B. Form 8975 Addresses a Collective Action Problem

Multinational tax dodging is a collective action problem, requiring a coordinated response based on mutual information exchange with our partner jurisdictions, as facilitated by Form 8975. As discussed above, the United States is not the only country harmed by tax

⁸ See, e.g., Sun, X., He, Z., & Arnon, A. (2021, September 29). *Profit shifting and the global minimum tax*. Penn Wharton Budget Model. Retrieved February 16, 2023, from <https://budgetmodel.wharton.upenn.edu/issues/2021/7/21/profit-shifting-and-the-global-minimum-tax>, [DAT](#)

⁹ See *id.*

¹⁰ Pursuant to Form 5471, the IRS has substantial access to a myriad of non-U.S. activities relating to controlled foreign corporations. See IRS Form 5471 (rev. Dec 2022), <https://www.irs.gov/pub/irs-pdf/f5471.pdf>. However, Another source of information relating to foreign operations is Form 1118, pursuant to which foreign tax credits are claimed. See IRS Form 1118 (rev. Dec. 2022), <https://www.irs.gov/pub/irs-pdf/f1118.pdf>;

¹¹ See P.L. 117-169 (117th Cong), sec. 10301(1)(A)(ii); see also The Build Back Better Framework, The White House (“Additional enforcement resources will be focused on pursuing those with the highest incomes...”), <https://www.whitehouse.gov/build-back-better/>.

¹² See, e.g., Steve Rosenthal, Who Owns US Stock? Foreigners and Rich Americans, Tax Policy Center (Oct. 2020), <https://www.taxpolicycenter.org/taxvox/who-owns-us-stock-foreigners-and-rich-americans>.

dodging practices by multinationals. A coordinated global response to this problem relies first and foremost on a coordinated exchange of information. As discussed previously, multinational tax enforcement is an information asymmetry problem, and information reporting to the IRS alone is insufficient to completely address this problem. Instead, exchange of this information with our partner jurisdictions is vital to ensuring that reported information is consistent and accurate.

Recognizing this, pursuant to the OECD/G20 Base Erosion and Profit Shifting Project, all OECD and G20 countries have committed to implementing country-by-country reporting, as set out in the Action 13 Report “Transfer Pricing Documentation and Country-by-Country Reporting.”¹³ Although the United States is not technically a member of the OECD multilateral instrument for exchanging country-by-country information, U.S. exchange of this information with partner jurisdictions pursuant to bilateral tax information exchange agreements remains an important signal of support for these coordinated efforts and allows the IRS to verify consistent, accurate information is being reported on Form 8975.¹⁴ As the IRS noted in connection with promulgating country-by-country reporting requirements, Form 8975 reporting also facilitates the coordinated exchange of information on a relatively standardized template.¹⁵

These factors allow for more resource efficient U.S. international tax enforcement. For example, exchange of country-by-country reporting information can help spread information verification costs related to tax enforcement across partner jurisdictions. In turn, this also can encourage more competent and informed partner jurisdictions. Finally, this type of coordinated exchange can serve as a vehicle for the U.S. to advance taxpayer protections, as well. In contrast, were the United States to stop requiring country-by-country reporting, then the United States might signal that multilateral tax enforcement cooperation is not a priority, ultimately increasing the cost (or undermining the efficiency) relating to multinational tax enforcement.

C. Information Reporting on Form 8975 Confirms that Multinational Tax Dodging Continues to be a Challenge for the IRS and our Partners

Perhaps the most convincing case for maintaining Form 8975 reporting stems from the initial results of Form 8975 reporting, as well as other country-by-country reporting information at the OECD, which has become critical data in understanding multinational tax strategies in light of the current international corporate tax framework. The IRS is to be commended for timely production of aggregated country-by-country data.¹⁶ From the IRS data, we have been able to better understand ongoing multinational tax dodging practices, as well as how multinationals respond to tax policy.

¹³ OECD (2022), *Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13*, OECD, Paris, <https://www.oecd.org/ctp/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf>.

¹⁴ For more information on current tax information exchange agreements, see U.S. Dep’t of Treasury, Tax Information Exchange Agreements (TIEAs) (accessed Feb. 17, 2023), <https://home.treasury.gov/policy-issues/tax-policy/tax-information-exchange-agreements-tieas>.

¹⁵ Additional info from Form 5471, and could ask for more based on what IRS might identify as particularly helpful (i.e., book/mkt value of IP/ wages, etc.).

¹⁶ See supra note 3 and accompanying text.

For example, in 2017 the Tax Cuts and Jobs Act (TCJA) dramatically changed how the United States taxes multinational corporations.¹⁷ Contrary to claims by proponents of the TCJA, we can clearly see from Form 9975 statistics that the TCJA did not end multinational profit shifting and other tax dodging practices.¹⁸ More specifically, we can see from Form 9975 statistics that some sectors have been more responsive to the TCJA, but that in all sectors, profit shifting practices remain robust.¹⁹

Already, Form 9975 statistics have resulted in more robust analysis of the U.S. international tax regime and multinational response than was previously possible.²⁰ Notably, a marked improvement may be actualized if the United States were to pursue public country-by-country reporting, as many of its peers are doing.²¹ However, in the meantime, this increased insight sheds more light on the ways that U.S. international tax policy actually impacts multinational behavior, allowing for more targeted policy that can better incentivize multinational tax compliance and increased investment in the United States that might benefit America's working families, among other priorities.

Similarly, Form 9975 statistics and the OECD's aggregate country-by-country tax reporting have also influenced global international tax reform negotiations. As in the United States, taxpayer information protections across the globe result in a general dearth of information regarding how multinationals engage in strategic tax planning to avoid or evade

¹⁷ See P.L. 115-97 (115th Cong); Joint Committee on Taxation, "US International Tax Policy: Overview and Analysis," March 2021, <https://bit.ly/3yvPOnU>. Succinctly, the TCJA ended the U.S. system of deferred worldwide corporate taxation, enacting in its place the global intangible low-income (GILTI) tax and the base erosion and anti-abuse tax (or BEAT). The GILTI creates an offshore minimum tax on aggregated foreign profits in excess of a 10% return on foreign tangible assets of U.S. multinationals at a rate equal to around half the U.S. statutory rate. Due to a variety of factors, including the ability to blend high-tax and low-tax jurisdiction results, GILTI is subject to abuse by many taxpayers. BEAT creates a minimum tax on U.S. and foreign multinationals that engage in certain base-erosion payments; however, BEAT is also subject to a variety of loopholes, such as not applying to cost of goods sold and only applying to a small number of multinational taxpayers. For more, see, e.g., Kimberly Clausing, "Fixing our 'America Last' tax policy," *The Hill* (Apr. 2019), <https://thehill.com/opinion/finance/438274-fixing-our-america-last-tax-policy/>.

¹⁸ See "SOI Tax Stats – Country by Country Report," U.S. Internal Revenue Service, <https://www.irs.gov/statistics/soi-tax-stats-country-by-country-report>.

¹⁹ See *id.*; see also Martin Sullivan, "Big Tech Is Moving Profit to the United States," *Tax Notes* (Aug. 23, 2021), <https://www.taxnotes.com/featured-analysis/big-tech-moving-profit-united-states/2021/08/20/776cs>; Martin Sullivan, "Little Progress on Pharma Profit Shifting Back to the United States," *Tax Notes* (Mar. 14, 2022), <https://www.taxnotes.com/tax-notes-federal/corporate-taxation/little-progress-pharma-profit-shifting-back-united-states/2022/03/14/7d8fq>.

²⁰ See, e.g., Clausing *supra* note 7 (using aggregate country-by-country reporting information to estimate U.S. multinational profit shifting); Garcia-Bernardo, Jansky, and Zucman, "Did the Tax Cuts and Jobs Act Reduce Profit Shifting by US Multinational Companies?," *NBER* (May 2022), https://www.nber.org/system/files/working_papers/w30086/w30086.pdf (using aggregate country-by-country reporting information to estimate the effects of the TCJA on multinational profit shifting practices).

²¹ For the case for the U.S. Securities and Exchange Commission to use its current authority to require public country-by-country reporting based on growing momentum from investors and other users of financial statements, see FACT Coalition, "FACT Sheet: The Case for SEC Action on Public Country-by-Country Reporting" (Dec. 8, 2022), <https://thefactcoalition.org/fact-sheet-the-case-for-sec-action-on-public-country-by-country-reporting/>.

taxes. Public filings for large multinational corporations generally do not have the amount of information necessary to inform a public understanding of these practices.²² It is generally quite difficult to have informed debates domestically or internationally around international tax policy without reliable information regarding multinational tax practices; Form 8975 reporting and aggregate public reporting of the information collected pursuant thereto are essential to this public debate.

D. U.S. and International Tax Reform Efforts Demand this Information for Better Enforcement and Better Policy

In light of recent international tax reform efforts, it is even more critical that the IRS and our partner jurisdictions have access to information reported on Form 8975, as well as for the public to have access to the information in aggregated form. In October 2021, 137 jurisdictions at the OECD/G20 Inclusive Framework, including the United States, agreed on a two-pillar solution meant to address the digitalization of the global economy that reallocated certain taxing rights to market jurisdictions (Pillar 1) and created a global minimum corporate tax with a 15% effective tax rate, applying on a country-by-country basis (Pillar 2).²³ In December 2022, the European Union agreed to a directive requiring adoption of Pillar 2 over the subsequent two years.²⁴ The United Kingdom, Japan, South Korea, and Thailand have also taken steps to implement Pillar 2; Australia and New Zealand are in their pre-legislation consultation phases. Others are expected to follow. Meanwhile, the United States failed to implement reforms consistent with Pillar 2 in 2022, instead creating a different corporate alternative minimum tax (or CAMT) in the Inflation Reduction Act.²⁵ CAMT, which applies in lieu of GILTI and BEAT, creates a 15% minimum tax on the worldwide profits of the largest multinationals operating in the United States.²⁶

²² See Ryan Gurule, Why Investors and Multinationals Should Push the U.S. for Public CbC Information, Tax Notes (Dec. 19, 2022), <https://thefactcoalition.org/wp-content/uploads/2023/01/2022tni51-14-1-1-2.pdf>.

²³ See OECD, Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (Oct. 8, 2021), <https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf>.

²⁴ EU, International taxation: Council reaches agreement on a minimum level of taxation for largest corporations (Dec. 12, 2022), <https://www.consilium.europa.eu/en/press/press-releases/2022/12/12/international-taxation-council-reaches-agreement-on-a-minimum-level-of-taxation-for-largest-corporations/>. Pillar 2 is comprised of a series of top-up taxes that allow a relevant jurisdiction where profits are booked (pursuant to a qualified domestic minimum top-up tax, or QDMTT), a headquarter jurisdiction (pursuant to an income-inclusion rule, or IIR), and an affiliate jurisdiction (pursuant to a UTPR) to tax-up a multinational enterprise that is not paying the minimum 15% effective tax rate on a country-by-country basis, in that order, in the event the country with prior taxing rights fails to do so. See OECD, Model Globe Rules (Dec. 20, 2021), <https://www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm>. The EU directive contemplates adoption of the IIR to be effective by 2024 and the adoption of UTPR to be effective 2025.

²⁵ See P.L. 117-169 (117th Cong).

²⁶ CAMT only applies to those multinationals with average annual net income in excess of \$1 billion and, for foreign multinationals, those that have U.S. effectively connected income in excess of \$100 million. See 26 U.S.C. § 59(k).

While the purpose of this comment is not to provide a detailed accounting of the current international tax laws governing U.S. multinationals and foreign multinationals subject to U.S. tax filing requirements, these reforms highlight the need for increased information exchange between the United States and our allies to effectively implement and enforce a variety of global minimum corporate tax regimes that have complicated nexus. It is also important for policy makers and the public to understand whether these reforms are working as anticipated, or whether improvement is needed, such as can be better informed (in the absence of public country-by-country reporting) by aggregate Form 8975 information. In other words, coordinated information exchange facilitated by Form 8975 is more important now than ever.

II. The IRS Should Clarify the Reason for Increasing Cost Estimates

In its solicitation for comment, the IRS indicates that cost estimates for U.S. multinationals have increased.²⁷ However, no detailed accounting is given. As noted in promulgating the final regulations requiring reporting on Form 8975, if the United States did not collect this information, other jurisdictions would. Whereas during the 2015 and 2016 rulemaking processes this baseline may not have been incorporated into estimates due to being hypothetical, the fact is that now our partner jurisdictions have required country-by-country reporting.

Moreover, for periods beginning after the summer of 2024, the European Union will be requiring a limited form of public country-by-country reporting and Australia may also be moving forward with a more fulsome public-country-by-country reporting regime.²⁸ Both of these regimes may apply to certain U.S. multinationals. It would be an odd result if only a patchwork of U.S. multinationals were to face these filing requirements without any consistent United States reporting requirements; nonetheless, any changing cost estimates should clearly take into consideration the changing international regulatory landscape. To the extent that multinationals are already required to file this information elsewhere if the United States fails to require this reporting—including to a limited extent—then any cost estimates should appropriately only incorporate incremental costs, if any, associated with a U.S. requirement for filing.

III. Reconsider an Exemption to Reporting for Defense Contractors

In addition to requiring continued reporting on Form 8975, the IRS should consider revisiting a previous partial exemption to country-by-country reporting for national defense

²⁷ See 88 FR 910 supra note 2.

²⁸ See See KPMG, Country-by-Country Reporting (2022), <https://home.kpmg/xx/en/home/services/tax/regional-tax-centers/eu-tax-centre/country-by-country-reporting.html#3>; Treasurer of the Commonwealth of Australia, Budget Paper No. 2: Budget Measures 2022-23, 17 (Oct. 25, 2022), https://budget.gov.au/2022-23-october/content/bp2/download/bp2_2022-23.pdf.

businesses that may be overly broad. The previous Administration exempted certain “national defense” businesses from complete country-by-country reporting if “more than 50 percent of the U.S. MNE group’s annual revenue, as determined in accordance with U.S. generally accepted accounting principles, in the preceding reporting period is attributable to contracts with the Department of Defense or other U.S. government intelligence or security agencies.”²⁹

Assumedly, the justification for this exemption is to protect the confidentiality of supply lines for the nation’s defense contractors; however, this justification should not protect the disclosure of profit shifting practices unrelated to actual operations.³⁰ Moreover, the United States may have a vested interest in ensuring for national security reasons that multinational companies are not engaging in profit shifting in a manner that erodes the tax base of the United States or its allies. A more well-tailored approach may consider allowing companies to avoid disclosure with respect to jurisdictions that have a certain ratio of tangible assets to an appropriate base, third-party revenues to total revenues, or employees and tangible assets to an appropriate base.

IV. Encourage IRS and Treasury to Make the Case for Country-by-Country Reporting

The request for comment fails to include information from the Treasury and the IRS regarding how country-by-country reporting on Form 8975 has been helpful or what information might make this reporting more useful to Treasury and the IRS. In requiring continuing reporting on Form 8975, it is important for Treasury and the IRS to clearly state the ways that this information has been useful as it relates to the reasons the rulemaking was first promulgated—that is, with respect to (i) tax compliance; (ii) tax enforcement; and (iii) international collaboration with partner jurisdictions. To the extent Treasury and IRS have identified information that would make country-by-country reporting more helpful, Treasury and IRS should consider stating this and requesting this information pursuant to applicable authority, including under 26 U.S.C. 6038.³¹

Conclusion

We thank you, again, for the opportunity to comment on continuing country-by-country reporting for certain multinational enterprises pursuant to Form 8975. This reporting has the ability to dramatically improve multinational tax compliance and enforcement efforts. Aggregate information produced based on Form 8975 has also already been invaluable in international tax reform discussions and in promoting international cooperation in addressing the collective action challenge regarding multinational tax avoidance in a digital global economy. For these reasons,

²⁹ See I.R.S. Notice 2008-31, <https://www.irs.gov/pub/irs-drop/n-18-31.pdf>.

³⁰ Notice 2008-31 seems to recognize this partially by requiring Form A be completed with respect to stateless income. See *id.*

³¹ For example, Form 8975 has been recently updated to clarify certain rules regarding income inclusion to avoid any risk of “double-counting” income. See Instructions to Form 8975, Line 2. (rev. Dec. 2020), <https://www.irs.gov/instructions/i8975>. Other information that might be helpful is whether certain revenue is subject to a distinct statutory or non-statutory tax regime, among other categories.

it is important that the IRS and Treasury continue to require this reporting and to report aggregated country-by-country reporting information in a timely manner.

Should you have any questions, please feel free to contact Erica Hanichak at ehanichak@thefactcoalition.org.

Sincerely,

Ian Gary

Executive Director, FACT Coalition