

**EXPLANATORY MEMORANDUM TO**  
**THE TAXES (BASE EROSION AND PROFIT SHIFTING) (COUNTRY-BY-COUNTRY REPORTING) REGULATIONS 2016**

**2016 No. 237**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 These Regulations require certain multinational enterprises to report annually to Her Majesty's Revenue and Customs details of revenue, profit, taxes and other measures of economic activity for each tax jurisdiction in which they do business. This information will help Her Majesty's Revenue and Customs and tax administrations in relevant countries to assess whether multinational enterprises may have engaged in actions intended to erode the tax base or shift profits into low-tax environments.

**3. Matters of special interest to the House of Commons**

*Matters of special interest to the Select Committee on Statutory Instruments*

- 3.1 This is the first exercise of powers under section 122 of the Finance Act 2015.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016 put into effect the United Kingdom's undertaking to introduce country-by-country reporting for multinational enterprises. Parent entities of multinational enterprises with consolidated group revenue of €750million or more in an accounting period that commences before, and ends on or after 31 December 2015 or which commences on or after 1 January 2016, will be required to file country-by-country reports for immediately following accounting period. The requirements in the Regulations implement recommendations on country-by-country reporting set out in a report on Transfer Pricing Documentation and Country-by-Country Reporting published by the Organisation for Economic Co-operation and Development (OECD) on 5 October 2015<sup>1</sup>.

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<sup>1</sup> <http://www.oecd.org/tax/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm>

- 4.2 The Regulations also introduce a filing requirement for entities of a foreign-headed multinational resident in the UK for tax purposes or with a permanent establishment in the UK to file a version of the country-by-country report in the UK where the information would not otherwise be reported or received by HMRC. There is also an option for any entity of a foreign-headed multinational enterprise to file a country-by-country report for the group with HM Revenue and Customs on a voluntary basis.
- 4.3 The Regulations are made by the Treasury under powers conferred by section 136 of the Finance Act 2002 in relation to the use of electronic communications, and by section 122 of Finance Act 2015 in respect of implementing the OECD's guidance on country-by-country reporting.
- 4.4 A Tax Information and Impact Note<sup>2</sup>, published on 10 December 2014 to accompany the primary legislation, explained that the obligation to file a country-by-country report would be introduced in two stages. The first stage was the introduction of primary legislation in section 122 of Finance Act 2015 which enabled regulations to be made at a later date once the OECD had completed further work on country-by-country reporting. The second stage is the making of these Regulations to give effect to the scope and detail of the obligation. (A further Tax Information and Impact Note accompanies these Regulations.)
- 4.5 The country-by-country report or the United Kingdom country-by-country report, as appropriate, will be filed electronically and its form and content will follow the template developed by the OECD. This will be specified in directions when work to develop electronic versions of the reporting templates and a transmission method is complete and in time for reports to be filed in accordance with the time limits set out in the Regulations.

## 5. **Extent and Territorial Application**

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

## 6. **European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## 7. **Policy background**

- 7.1 Country-by-country reporting is intended to improve transparency between multinational businesses and tax authorities and help identify tax avoidance. The UK initiated the country-by-country reporting proposals during its G8 Presidency in 2013, calling on the OECD to develop a reporting template as part of a joint G20-OECD project to strengthen international tax standards to prevent Base Erosion and Profit Shifting.
- 7.2 The project was set up to provide a comprehensive coordinated approach to address aggressive tax planning by multinational enterprises that seek to reduce taxes on their profits by exploiting weaknesses in the international tax rules or the rules that exist in different jurisdictions. Across the G20 and OECD, 44 countries worked together to

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<sup>2</sup> <https://www.gov.uk/government/publications/country-by-country-reporting>

achieve comprehensive and sustainable reform of the international tax rules to restore the coherence of corporate tax at the international level and to better align taxing rights over profits with the economic activity that generates them.

- 7.3 The project recognised a need to ensure that tax administrations have access to sufficient information to assess whether multinational enterprises may have taken transfer pricing positions or engaged in other actions intended to erode the tax base or shift profits into low-tax environments. The country-by-country report is one element of a new three-tiered standardised approach to transfer pricing documentation consisting of (i) a master file containing information relevant for all members of the multinational enterprise; (ii) a local file containing information about material transactions of the local taxpayer; and (iii) the country-by-country report.
- 7.4 The UK was one of the first countries to formally commit to implementing the country-by-country reporting template when it was published by the OECD in September 2014. The OECD subsequently published further guidance on the implementation of country-by-country reporting, including model legislation and reporting template. These Regulations make reference to and draw on definitions from the model legislation published by the OECD.
- 7.5 These Regulations mean that multinational enterprises will be required to submit a country-by-country report in a specified format and within set time limits when they meet the conditions set out in the Regulations.
- 7.6 These Regulations introduce a new obligation for multinational enterprises with parent entities resident in the United Kingdom and with consolidated group revenue of €750 million or more in a 12-month accounting period (reduced proportionately for periods of less than 12 months) to make a country-by-country report to HM Revenue and Customs for the following accounting period.
- 7.7 In accordance with the OECD template, parent entities of multinationals which have to file a report will be required to provide the following information for each tax jurisdiction in which they do business:
- the amount of revenue, profit before income tax and income tax paid and accrued; and
  - their total employment, capital, retained earnings and tangible assets.
- 7.8 They will also be required to identify each entity within the group doing business in a particular tax jurisdiction and to provide an indication of business activities within a selection of broad areas which each entity engages in. Country-by-country reports will be automatically shared by relevant countries in accordance with international agreements governing the exchange of information. The Regulations will require UK headed multinationals to provide HM Revenue and Customs with information about global activities, profits and taxes. This will help HMRC to better assess international tax avoidance risks.
- 7.9 The obligation to file a report will apply to accounting periods as set out in paragraph 4.1. A report must be filed no later than 12 months after the end of the accounting period to which it relates. Most accounting periods will cover a period of 12 months. But there is a small possibility that a relevant accounting period will have commenced and concluded before the regulations come into force. However, the report will not be due for filing until 12 months after the end of that accounting period.

7.10 The Regulations also include a requirement for the top UK entity of a multinational enterprise, or the top non-UK entity which has a UK permanent establishment, to file a country-by-country report when the ultimate parent entity is resident in a country that either does not require it to file a country-by-country report or does not exchange reports with HM Revenue and Customs in accordance with an effective international agreement. This local filing requirement will mean that the top UK entity of a multinational will file a country-by-country report covering all entities within the sub-group of which it is head. There is an exception if the results the UK entity would be required to file have already been included in a country-by-country report that HM Revenue and Customs can receive from another tax jurisdiction, or has received under the voluntary filing provisions mentioned below.

7.11 In certain circumstances where the parent entity of a multinational is not resident in the United Kingdom, another member of the group may voluntarily file a report on the group's behalf as long as an entity of the group is resident in the UK for tax purposes or has permanent establishment in the UK. Broadly speaking, these are circumstances where:

- the group's parent entity is resident in a jurisdiction which does not require country-by-country reporting, or
- the group's parent entity is resident in a jurisdiction which is not party to an effective agreement for the automatic exchange of the country-by-country report between it and the United Kingdom, or
- arrangements to exchange country-by-country reports with the jurisdiction in which the group parent is resident are not operating effectively.

A multinational group may wish to take advantage of this ability to file voluntarily because it means that the UK will be able to exchange its country-by-country report with other relevant tax authorities which may potentially reduce the number of individual information requests entities of the group receive from other countries.

7.12 The reporting requirement is supported by a penalty regime in the event that a multinational enterprise does not provide its country-by-country report on time without a reasonable excuse for the failure, or knowingly supplies incorrect information.

7.13 If a multinational enterprise enters into arrangements that are intended to allow it to avoid any obligation imposed by these Regulations, those arrangements may be disregarded.

## 8. **Consultation outcome**

8.1 The OECD consulted widely in the course of developing its recommendations which cover the scope of reporting requirements and the format of the country-by-country report. Their recommendations were endorsed by G20 leaders during their annual summit on 15-16 November 2015. HM Treasury and HM Revenue also engaged with UK stakeholders during the delivery of the OECD BEPS Action Plan and have continued to do so subsequently. A further consultation on the proposals was therefore not undertaken, but on 5 October 2015, HM Revenue and Customs published draft regulations to implement the OECD recommendations for comment by 16 November 2015. Twelve responses were received. Broadly, respondents were content with the alignment between the regulations and the OECD model legislation, but sought further clarity on when a UK entity would be required to file a country-by-country report in

the UK. These regulations clarify the position by setting out clearly when the top UK entity of a foreign-headed multinational is required to file a country-by-country report in the UK.

## 9. **Guidance**

- 9.1 The OECD has re-written Chapter V of the Transfer Pricing Guidelines to include guidance on the completion of the country-by-country template. The revised text was published in the OECD's Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report on 5 October 2015.

## 10. **Impact**

- 10.1 This measure will primarily affect UK-headed MNEs with a consolidated group revenue of €750 million or more. It will also affect UK resident subsidiaries or permanent establishments of non-UK headed MNEs who will be required to complete a template as a result of the local filing requirement.
- 10.2 This measure is expected to have no impact on charities or voluntary bodies.
- 10.3 There is no impact on the public sector.
- 10.4 A Tax Information and Impact Note covering this instrument will be published on the government website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

## 11. **Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## 12. **Monitoring & review**

- 12.1 The OECD will review the implementation of country-by-country reporting and have committed to reassess no later than the end of 2020 whether any modifications should be made to require reporting of additional or different data.

## 13. **Contact**

- 13.1 Anne Stark at HM Revenue & Customs Tel: 03000 585 904 or email: [anne.b.stark@hmrc.gsi.gov.uk](mailto:anne.b.stark@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.