EXPLANATORY MEMORANDUM TO

THE TAXES (BASE EROSION AND PROFIT SHIFTING) (COUNTRY-BY-COUNTRY REPORTING) (AMENDMENT) REGULATIONS 2023

2023 No. 752

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of His Majesty.

2. Purpose of the instrument

2.1 The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) (Amendment) Regulations 2023 (2023 Regulations) amend the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016 (as amended) (2016 Regulations).

2.2 The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016 (as amended) require certain multinational enterprises to report annually to HMRC details of revenue, profit, taxes and other measures of economic activity for each tax jurisdiction in which they do business. This information helps His 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. The 2016 Regulations were and amended in 2017 to introduce a requirement for reporting enterprises to, in addition, submit an annual notification of their intention to report to HMRC. The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) (Amendment) Regulations 2023 amends the 2016 Regulations (as amended) to remove the notification requirement.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The application of this instrument (that is where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016 (as amended) put into effect the United Kingdom's undertaking to introduce country-by-country reporting for multinational enterprises with effect for accounting periods commencing on or after 1 January 2016 in accordance with guidance published by the Organisation for Economic Co-operation and Development (OECD) in pursuance of Action 13 of their action plan to address base erosion and profit shifting.

6.2 The 2023 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.

7. Policy background

What is being done and why?

7.1 Country-by-country reporting improves transparency between multinational businesses and tax authorities and helps identify tax avoidance. The measure was introduced under the OECD's Action 13.

7.2 The requirement for multinational entities to submit an annual notification of their filing to HMRC was included in the EU directive DAC4 (European Union Council Directive 2016/881 that requires all EU member states to share Country-by-Country Reports with each other). The United Kingdom (UK) was bound by the requirements of that directive when the measure was implemented in 2016. The notification requirement is not mandatory in the Organisation for Economic Co-operation and Development's model. Since leaving the EU, the UK is free to remove this requirement.

7.3 In the past notifications gave HMRC some valuable information but now that data has been gathered for several years and notifications no longer provide useful or unique information.

7.4 Removing the notification requirement will release HMRC resource, allowing staff to address country-by-country reporting queries and focus on the quality of the report data. Multinational entities will be relieved of the administrative task of submitting notifications.

Explanations

What did any law do before the changes to be made by this instrument?

7.5 The 2016 Regulations require certain multinational entities to report to HMRC information about their global activities, profits and taxes. In addition, the 2016 Regulations require entities to submit an annual notification of their intention to file a report.

Why is it being changed?

7.6 The 2023 Regulations amend the 2016 Regulations to reduce the administration entailed in the Regulations and increase efficiencies within HMRC. The notification data is of little use to HMRC since the data has been collected for a number of years. The notification requirement was originally introduced in response to an EU directive

(DAC4). Please see relevant explanatory statements in the Annex to this Explanatory Memorandum.

What will it now do?

7.7 The 2016 Regulations will continue to require certain multinational entities to provide annual country-by-country reports on their activities to HMRC, but they will no longer be required to notify HMRC before providing a report.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union. It does amend Regulations that were made under s2(2) of the European Communities Act 1972. As a result of the provisions set out in the Retained EU Law Act 2023, Schedule 8 of the European Union (Withdrawal) Act 2023 has been amended and the statements previously required under this Schedule are no longer required.

9. Consolidation

9.1 This instrument amends the 2016 regulations. There are currently no plans to consolidate amendments made to those regulations.

10. Consultation outcome

10.1 A consultation was not carried out because the changes this statutory instrument makes do not affect the quality, content, timing or frequency of the reports provided under country-by-country reporting regulations. The removal of the notification requirement will reduce the administration for entities within scope without otherwise affecting their obligations.

11. Guidance

11.1 The Organisation for Economic Co-operation and Development has released guidance to give greater certainty to tax administrations and multinational entity groups alike on the implementation of country-by-country reporting regulations, please see Guidance on Country-by-Country Reporting: BEPS Action 13 - OECD.

11.1 For guidance on the OECD's 2013 Action Plan on Base Erosion and Profit Shifting, please see http://dx.doi.org/10.1787/9789264202719-en.

12. Impact

12.1 There is no, or no significant impact on business, charities or voluntary bodies. This measure will primarily affect UK-headed Multinational Entities (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.

12.2 There is no, or no significant impact on the public sector.

12.3 A Tax Information and Impact Note has not been prepared for this instrument because this instrument amends an existing regulatory standard, there is a low level of administrative impact per business and not many businesses are affected.

13. Regulating small business

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

14. Monitoring & review

14.1 This legislation and its implementation is peer reviewed annually by the OECD. The peer review process assesses the implementation of transparency and exchange of information standards. Jurisdictions can receive recommendations on domestic legal and administrative framework, exchange of information framework and appropriate use. The UK received no recommendations in the 2022 Peer Review Reports. Please see United Kingdom | Country-by-Country Reporting – Compilation of 2022 Peer Review Reports : Inclusive Framework on BEPS: Action 13 | OECD iLibrary (oecd-ilibrary.org).

14.2 The regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 under section 28(3)(a) a review clause is not required as the regulations make or amend provisions relating to tax.

15. Contact

15.1 Rosaline Zulaikhah at HMRC, Telephone: 03000 562 395 or email: rosaline.zulaikhah@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 John Shuker, Deputy Director for International Collaboration and Transparency, at HMRC, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Atkins MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.