
STATUTORY INSTRUMENTS

2023 No. 818

CORPORATION TAX

INCOME TAX

The Transfer Pricing Records Regulations 2023

<i>Made</i>	- - - -	<i>18th July 2023</i>
<i>Laid before the House of Commons</i>	- - - -	<i>19th July 2023</i>
<i>Coming into force</i>	- -	<i>9th August 2023</i>

The Commissioners for His Majesty’s Revenue and Customs make the following Regulations in exercise of the powers conferred by section 12B(3A), (5BA) and (5C) of the Taxes Management Act 1970(1), paragraph 21(5A), (5AA) and (5B) of Schedule 18 to the Finance Act 1998(2) and paragraph 7 of Schedule 5 to the Finance (No. 2) Act 2023(3).

Citation, commencement, effect and interpretation

1.—(1) These Regulations may be cited as the Transfer Pricing Records Regulations 2023 and come into force on 9th August 2023.

(2) These Regulations have effect—

- (a) for corporation tax purposes, in relation to accounting periods beginning on or after 1st April 2023;
- (b) for income tax purposes, in relation to the tax year 2024-25 and subsequent years.

(3) In these Regulations—

“controlled transaction” has the meaning given in regulation 3;

“Local File” and “Master File” have the same meaning as they do in the transfer pricing guidelines(4);

(1) 1970 c. 9. Section 12B was inserted by paragraph 3 of Schedule 19 to the Finance Act 1994 (c. 9). Paragraphs (3A) and (5C) were inserted by paragraph 2 of Schedule 37 to the Finance Act 2008 (c. 9). Section 12B(6)(aa) defines “relevant transfer pricing records”; subsections (5BA) and (6)(aa) were inserted by paragraph 3 of Schedule 5 to the Finance (No. 2) Act 2023 (c. 30).

(2) 1998 c. 36. Sub-paragraphs (5A) and (5B) were inserted by paragraph 8 of Schedule 37 to the Finance Act 2008 (c. 9). Paragraph 21(6)(a) defines “relevant transfer pricing records”; sub-paragraphs (5AA) and (6)(a) were inserted by paragraph 1 of Schedule 5 to the Finance (No. 2) Act 2023.

(3) 2023 c. 30.

(4) “Transfer pricing guidelines” has the meaning given in section 12B(5BA) of the Taxes Management Act 1970 and paragraph 21(5AA) of Schedule 18 to the Finance Act 1998.

“MNE Group” has the meaning given in regulation 2(3) of the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016⁽⁵⁾;

“relevant person” has the meaning given in regulation 2(1);

“relevant tax period” has the meaning given in regulation 2(2);

“specified person” has the meaning given in regulation 3(2);

“TIOPA 2010” means the Taxation (International and Other Provisions) Act 2010⁽⁶⁾;

“TMA 1970” means the Taxes Management Act 1970.

Meaning of relevant person and relevant tax period

2.—(1) “Relevant person” means—

- (a) a company which may be required by a notice under paragraph 3 of Schedule 18 to the Finance Act 1998 (company tax return)⁽⁷⁾ to make and deliver a return for a relevant tax period,
- (b) a person who may be required by a notice under section 8A of TMA 1970 (trustees return)⁽⁸⁾ to make and deliver a return for a relevant tax period, or
- (c) a person who may be required by a notice under section 12AA of TMA 1970 (partnership return)⁽⁹⁾ to make and deliver a return for a relevant tax period.

(2) “Relevant tax period” means a tax period—

- (a) in respect of which—
 - (i) the person mentioned in paragraph (1)(a),
 - (ii) in relation to the person mentioned in paragraph (1)(b), the trustees of the trust concerned, or
 - (iii) in relation to the person mentioned in paragraph (1)(c), the partnership to which the partnership return relates,
 together with one or more other enterprises, constitutes an MNE Group, and
- (b) in respect of which the MNE Group meets the threshold requirement within the meaning of regulation 3(2) to (4) of the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016.

(3) In paragraph (2), “tax period” has the meaning given in paragraph 28(g) of Schedule 24 to the Finance Act 2007.

Meaning of controlled transaction

3.—(1) In these Regulations, and in the transfer pricing guidelines so far as they apply for the purposes of these Regulations, a transaction or series of transactions is a “controlled transaction” in relation to a relevant person if—

(5) S.I. 2016/237, amended by S.I. 2017/497.

(6) 2010 c. 8.

(7) 1998 c. 36. Paragraph 3 was amended by paragraph 68(a) of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11), paragraph 385(2) of Schedule 1 to the Income Tax Act 2007 (c. 3) and section 34(3) of the Finance Act 2021 (c. 26).

(8) Section 8A was inserted by section 90 of the Finance Act 1990 (c. 29). It was relevantly amended by section 178(2) of the Finance Act 1994 (c. 9), section 121(3) of the Finance Act 1996 (c. 8) and section 89(4) of the Finance Act 2007 (c. 11).

(9) Section 12AA was inserted by section 184 of the Finance Act 1994. It was relevantly amended by section 104(6) of the Finance Act 1995 (c. 4), sections 121(7) and 123(4) of the Finance Act 1996, section 90(1) and (2) of the Finance Act 2007 and paragraphs 3(2) and 6(2) of Schedule 6 to the Finance Act 2018 (c. 3).

- (a) provision has been made or imposed between a specified person and another person (“the other affected person”) by means of the transaction or series of transactions,
 - (b) the participation condition in section 148 of TIOPA 2010 is met in relation to that provision,
 - (c) that condition is not met only because of section 161 or 162 of TIOPA 2010 (indirect participation: financing cases), and
 - (d) the provision is not within section 147(7) of TIOPA 2010 (transactions involving oil).
- (2) In these Regulations, “specified person”, in relation to a relevant person, means—
- (a) in the case of a company, the relevant person,
 - (b) in the case of a trust, the trustees of the trust of which the relevant person is a trustee, and
 - (c) in the case of a partnership, the partners in the partnership of which the relevant person is a partner.
- (3) In paragraph (1), “transaction” and “series of transactions” have the meanings given in section 150 of TIOPA 2010.

Obligation to keep and preserve relevant transfer pricing records

4.—(1) A relevant person must keep and preserve the relevant transfer pricing records specified in regulation 5 that relate to the relevant tax period.

(2) But paragraph (1) does not apply to a relevant person (“P”) if, were P to be subject to the obligation in that paragraph, P would not be required to include any information about controlled transactions in the Local File.

Specified relevant transfer pricing records

5.—(1) The following are specified relevant transfer pricing records for the purposes of section 12B of TMA 1970 and paragraph 21 of Schedule 18 to the Finance Act 1998—

- (a) the records listed in column 1 of the table, and
 - (b) any other records specified in a notice published in accordance with paragraph (4).
- (2) Except where regulation 6 applies, the records listed in the table must—
- (a) contain the information described in the documents referred to in column 2 of the table, and
 - (b) be kept and preserved in the form and manner set out in those documents.
- (3) The table for the purposes of paragraph (1) and (2) is as follows.

<i>Column 1</i>	<i>Column 2</i>
The Local File	Annex II to Chapter V of the transfer pricing guidelines ⁽¹⁰⁾ .
The Master File	Annex I to Chapter V of the transfer pricing guidelines ⁽¹¹⁾ .

(4) The Commissioners for His Majesty’s Revenue and Customs may specify in a published notice—

(10) Annex II to Chapter V of the transfer pricing guidelines can be found here: https://read.oecd-ilibrary.org/taxation/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2022_0e655865-en#page547.

(11) Annex I to Chapter V of the transfer pricing guidelines can be found here: https://read.oecd-ilibrary.org/taxation/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2022_0e655865-en#page545.

- (a) supplementary information relating to the preparation of the Local File, and
- (b) the form and manner in which that information is to be kept and preserved.

Information that may be excluded from the Local File

6.—(1) A relevant person does not have to include information in the Local File in respect of a controlled transaction where, at any time during the relevant tax period, the specified person and the other affected person are each—

- (a) a company resident in the United Kingdom for tax purposes,
- (b) trustees of a trust where the trustees are resident in the United Kingdom for tax purposes in accordance with section 475 of the Income Tax Act 2007⁽¹²⁾, or
- (c) partners in a partnership where all of the partners are resident in the United Kingdom for tax purposes.

(2) Paragraph (1) does not apply if—

- (a) the specified person and the other affected person are members of the same MNE Group, and
- (b) in respect of the relevant period—
 - (i) one or both of them has made an election under section 357A of the Corporation Tax Act 2010 (election for special treatment of profits from patents etc.)⁽¹³⁾, or
 - (ii) one or both of them is carrying on a ring fence trade.

(3) A relevant person does not have to include information in the Local File in respect of a controlled transaction where, during the relevant tax period, an advance pricing agreement made on or before 31st March 2023 has effect in relation to that transaction.

(4) In this regulation—

“advance pricing agreement” means an advance pricing agreement described in section 218 of TIOPA 2010;

“the other affected person” has the meaning given in regulation 3(1)(a);

“ring fence trade” in relation to—

- (a) corporation tax, has the meaning given in section 277 of the Corporation Tax Act 2010 (oil activities);
- (b) income tax, has the meaning given in section 225D of the Income Tax (Trading and Other Income) Act 2005 (oil activities)⁽¹⁴⁾.

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Two of the Commissioners for His Majesty's
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18th July 2023

⁽¹²⁾ Section 475 was amended by paragraph 103 of Schedule 45 and paragraph 56 of Schedule 46 to the Finance Act 2013 (c. 29).

⁽¹³⁾ 2010 c. 4. Section 357A was inserted by paragraph 1 of Schedule 2 to the Finance Act 2012 (c. 14) and amended by section 64(2) of the Finance Act 2016 (c. 24).

⁽¹⁴⁾ 2005 c. 5. Section 225D was inserted by paragraph 2 of Schedule 1 to the Taxation (International and Other Provisions) Act 2010.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect to the record keeping requirements in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022.

These Regulations have effect for corporation tax purposes in relation to returns for accounting periods beginning on or after 1st April 2023 and for income tax purposes from the tax year 2024-25.

Regulation 2 defines a relevant person as a company, trustee or partnership who may be required to make and deliver a tax return. It also defines a relevant tax period as the tax period in respect of which the enterprise in relation to which the relevant person must make and deliver a return is part of an MNE Group which has a total consolidated group revenue of €750 million.

Regulation 3 defines controlled transaction for the purposes of the Regulations and the preparation of the Local File, by reference to the domestic implementation of the transfer pricing guidelines in Part 4 of the Taxation (International and Other Provisions) Act 2010, as transactions which involve two parties who are, in general, in some form of common control. Certain cases involving financing and transactions in oil are excluded.

Regulation 4(1) sets out the obligation that a relevant person must keep and preserve relevant transfer pricing records specified in regulation 5 that relate to the relevant period unless the exclusion in paragraph (2) applies. The exclusion applies where, if a relevant person was subject to the obligation, they would not have to include any information in the Local File about controlled transactions either because they do not have any or because any they do have fall under the exclusions in regulation 6.

Regulation 5 sets out what are specified transfer pricing records for the purposes of section 12B of the Taxes Management Act 1970 and paragraph 21 of Schedule 18 to the Finance Act 1998 and the form and manner in which the records must be kept. The specified transfer pricing records are the Master File and the Local File, which are described in the transfer pricing guidelines, and supplementary information relating to the preparation of the Local File specified in a notice published by the Commissioners for His Majesty's Revenue and Customs.

Regulation 6 provides for information that does not have to be included in the Local File. This includes transactions where all parties are resident in the United Kingdom, with specified exceptions, and transactions which are the subject of advance pricing agreements made on or before 31st March 2023.

Paragraph 7 of Schedule 5 to the Finance (No. 2) Act 2023 provides that the Regulations may have effect in relation to such accounting periods or tax years beginning on or after 1st April 2023 as are specified in the regulations.

A paper copy of the OECD Transfer Pricing Guidelines 2022 is available for inspection at: His Majesty's Revenue and Customs, 100 Parliament Street, London SW1A 2BQ. The OECD Transfer Pricing Guidelines 2022 are also available to review free of charge on the OECD website at <https://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-20769717.htm>.

A Tax Information and Impact Note covering this instrument was published on 15 March 2023 alongside the Spring Finance Bill 2023 and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.