EXPLANATORY MEMORANDUM TO

THE TAXES (BASE EROSION AND PROFIT SHIFTING) (COUNTRY-BY-COUNTRY REPORTING) (AMENDMENT) REGULATIONS 2017

2017 No. 497

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.

2. Purpose of the instrument

2.1 The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) (Amendment) Regulations 2017 amend The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016 to extend country-by-country reporting requirements to partnerships and to implement the European Union Directive on Administrative Co-operation (Council Directive 2011/16/EU as amended by 2016/881/EU1) ("the DAC").

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

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 This instrument is made under powers conferred by section 2(2) of the European Communities Act 1972, section 136 of the Finance Act 2002 and section 122 of the Finance Act 2015.

4.2 The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) (Amendment) Regulations 2017 amend The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016 ("the 2016 Regulations"). The latter placed obligations on parent entities of multinational enterprises ("MNEs") with consolidated group revenue of €750million or more in an annual period to file country-by-country reports with HM Revenue and Customs. The 2016 Regulations implement recommendations made by the Organisation for Economic Co-operation and Development (OECD) in its report titled Transfer Pricing Documentation and Country-by-Country Reporting published on 5 October 2015.[2]

[1] http://data.ea.eu/eli/dir/2016/881/oj

[2] http://www.oecd.org/tax/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm

4.3 In June 2016, the OECD published guidance on the implementation of country-by-country reporting which clarified that partnerships should be reporting entities for country-by-country reporting, this guidance has since been incorporated into guidance published in December 2016[3]. In light of this, HM Treasury considers it appropriate to modify the implementation of the original OECD publication of October 2015 in the 2016 Regulations to include partnerships.

4.4 The Regulations also implement the country-by-country reporting requirements in the DAC[4]which largely mirror the OECD requirements. The DAC includes an requirement for a UK entity which is not the parent entity of its MNE group to ask the parent entity for the information required to file a full country by country report and a requirement for a UK entity in each MNE group to tell HMRC, annually, which entity in the group will file the country-by-country report and where. The entity providing this information is also required to provide the names and unique taxpayer references for all of the MNE group's UK entities.

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 On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.

7.2 Country-by-country reporting is an output of the OECD Base Erosion and Profit Shifting project which is intended to improve transparency between multinational businesses and tax authorities and help identify tax avoidance.

7.3 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 amendments made by this instrument are required to reflect

3 http://www.oecd.org/tax/beps/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf

4 http://data.ea.eu/eli/dir/2016/881/oj

updated guidance from the OECD about the application of country-by-country reporting to partnerships and implement DAC.

7.5 The OECD originally recommended imposing a filing obligation where the entity was resident for tax purposes in a jurisdiction. Partnerships are transparent for tax purposes and therefore cannot be resident for tax purposes in the UK. The OECD has updated its guidance to make clear that where partnerships head MNE groups they could be reporting entities in the jurisdictions where they are formed. The government confirmed in summer 2016 that the 2016 Regulations would be amended to include partnerships. The amendments made by this instrument ensure that all appropriate MNE groups are covered.

7.6 The DAC is the result of the European Union incorporating country-by-country reporting into European Law. The DAC requires the UK to impose some additional obligations on entities of multi-national groups in the UK.

7.7 The instrument requires at least one UK entity of an MNE group subject to country-by-country reporting to notify HMRC annually which entity in the MNE group will file the country-by-country report and in which jurisdiction it will do so. The amendments also require the entity to provide the names and unique taxpayer references for all of the UK entities of the MNE group.

7.8 The notification is to be made by the end of the period being reported on. However given that the first period covered by the regulations is the year ended 31 December 2016, the amendments require notifications to be received by 1 September 2017 for the first year and by the end of the relevant period in subsequent years.

7.9 The 2016 Regulations imposed a filing obligation on the top UK entity of an MNE group to file a country-by-country report in respect of its activities or those of its sub-group in certain circumstances ("local report"). This instrument requires such UK entities to ask their parent entity for the information necessary to file a country by country report in respect of the whole group. If the parent entity refuses to provide the information then the UK entity must inform HMRC of the refusal and file a local report ("local filing").

7.10 These Regulations make a minor adjustment to fully align the UK's local filing requirements with the OECD model. Local filing will be required for example where the parent jurisdiction of the foreign MNE has entered an international agreement which allows for exchange of information but has not entered into specific arrangements to exchange country-by-country reports.

7.11 The 2016 Regulations continue to apply in respect of accounting periods or equivalent which commenced before and ended on or after 31st December 2016. However the earliest date by which any entities will be required to comply with an obligation under the Regulations is 1st September 2017.

8. Consultation outcome

8.1 The Regulations were subject to a short informal consultation with stakeholders and they take account of the responses received.

9. Guidance

9.1 The OECD has re-written Chapter V of the Transfer Pricing Guidelines to include guidance on the completion of the county-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. Further guidance was published in June 2016 and December 2016.

10. Impact

10.1 Country-by-country reporting requirements primarily affect UK-headed MNEs with a consolidated group revenue of €750 million or more. They 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. The amendment regulations will extend the impact to a small number of multinational partnerships.

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 http://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 Hugh Dorey on 03000 585 838 (email: hugh.dorey@hmrc.gsi.gov.uk) or Debra Evans on 03000 589657 (email: debra.evans@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.