STATUTORY INSTRUMENTS

2016 No. 237

TAXES

The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016

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The Treasury make these Regulations in exercise of the powers conferred by section 136 of the Finance Act 2002(**a**) and section 122 of the Finance Act 2015(**b**):

(**a**) 2002 c. 23.
(**b**) 2015 c.11.

Citation and commencement

1. These Regulations may be cited as the Taxes (Base Erosion and Profit Shifting) (Country-by-Country) Reporting Regulations 2016 and come into force on 18th March 2016.

Interpretation

2.—(1) In these Regulations—

"CBC report" means a country-by-country report or a United Kingdom country-by-country report;

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"country-by-country report" means a report about an MNE Group and its Constituent Entities containing the information specified in specific or general directions given by the Commissioners;

"exchange arrangements" means arrangements to exchange country-by-country reports or their equivalent;

"file", except in relation to filing outside the United Kingdom, means file with Revenue and Customs;

"filing deadline" means 12 months after the end of the accounting period to which the CBC report relates;

"OECD model legislation" means the model legislation in the OECD Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report(**a**);

"reporting entity" has the meaning given by regulation 10;

"threshold requirement" has the meaning given by regulation 4;

"the tribunal" means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal;

"United Kingdom country-by-country report" has the meaning given by regulation 5; and

"United Kingdom Entity" has the meaning given by regulation 5.

(2) The following expressions have the same meaning in these Regulations as they do in the OECD model legislation—

"Consolidated Financial Statements" if they are prepared in accordance with generally accepted accounting practice or international accounting standards, which expressions have the meaning given to them in section 1127 of the Corporation Tax Act 2010; and

"Constituent Entity".

(3) "MNE Group" has the same meaning in these Regulations as it does in Article 1(2) of the OECD model legislation except that Article 1(2)(ii) (Excluded MNE Group) does not apply.

(4) "Ultimate Parent Entity" has the same meaning as it does in the OECD model legislation except that in regulations 3(3) and 10(1)(a) the entity must be resident in the United Kingdom for tax purposes.

Filing of CBC reports

3.—(1) This regulation applies where an MNE Group ("G") meets the threshold requirement in respect of an accounting period ("AP") where AP—

(a) commences before and ends on or after 31st December 2015; or

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(**a**) As part of the OECD/G20 Base Erosion and Profit Shifting Project, the OECD published "Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report" on 5th October 2015. The report is available on the OECD website at http://www.oecd.org/tax/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm. A paper copy may be obtained from a range of distributors including the OECD Conference Centre Bookshop OECD Conference Centre, 2 rue André Pascal, 75775 Paris Cedex 16, France, Tel: 33 (0)1 45 24 79 77, Email: oecd.bookshop@oecd.org.

(b) commences on or after 1st January 2016.

(2) The accounting period immediately following AP is "AP+1".

(3) The Ultimate Parent Entity of G must file a country-by-country report in respect of AP+1 by the filing deadline.

(4) Subject to paragraph (5), a United Kingdom Entity of G ("UKEG") must file a United Kingdom country-by-country report in respect of AP+1 by the filing deadline if—

(a) the UKEG is not required to file a country-by-country report under paragraph (3); and

(b) one of the conditions in regulation 6 is met.

(5) The duty in paragraph (4) does not apply if exception A or exception B applies.

(6) Exception A applies where before the filing deadline—

(a) a Constituent Entity of G has filed a country-by-country report further to paragraph (8) in respect of AP+1 and that report includes the information required to be contained in the United Kingdom country-by-country report otherwise required to be filed by the UKEG; and

(b) the UKEG provides details to Revenue and Customs of—

(i) the identity of the Constituent Entity which has filed the report; and

(ii) the date the report was filed.

(7) Exception B applies where before the filing deadline—

(a) a Constituent Entity of G has filed in a jurisdiction other than the United Kingdom the equivalent of a country-by-country report in respect of AP+1 and that report includes the information required to be contained in the United Kingdom country-by-country report otherwise required to be filed by the UKEG;

(b) the appropriate authority of that jurisdiction has entered into exchange arrangements with Revenue and Customs which apply to the report filed and Revenue and Customs has not notified the UKEG that the arrangements are not operating effectively; and

(c) the UKEG provides details to Revenue and Customs of—

(i) the identity of the Constituent Entity which has filed the report and where it is resident for tax purposes;

(ii) the jurisdiction in which the report was filed; and

(iii) the date the report was filed.

(8) A Constituent Entity of G ("CEG") may file a country-by-country report on behalf of G in respect of AP+1 by the filing deadline if—

(a) CEG or another Constituent Entity of G is resident for tax purposes in the United Kingdom or has a permanent establishment in the United Kingdom;

(b) CEG—

(i) is not required to file a country-by-country report under paragraph (3); and

(ii) is authorised by the Ultimate Parent Entity of G to file a country-by-country report on behalf of G in respect of AP+1 and the Ultimate Parent Entity has notified Revenue and Customs of that authority in writing on or before the filing deadline; and

(c) one of the conditions in regulation 6 is met.

Threshold requirement

4.—(1) In regulation 3, the "threshold requirement" means that the MNE Group has a total consolidated group revenue of €750 million or more for an accounting period—

(a) as shown in its Consolidated Financial Statements; or

(b) as would have been shown in its Consolidated Financial Statements had the Group been required to produce them by reason of the trading of equity interests in any of the enterprises in the MNE Group on a public securities exchange.

(2) Where an MNE Group draws up, or would draw up, its Consolidated Financial Statements for an accounting period in a currency other than euros, the reference to €750 million in paragraph (1) has effect as if it referred to the equivalent in that currency at the average exchange rate for the accounting period.

(3) When the accounting period of an MNE Group is a period of less than 12 months, the amount of €750 million in paragraph (1) (or the equivalent under paragraph (2)) is reduced proportionately.

United Kingdom country-by-country report and United Kingdom Entity

5.—(1) "United Kingdom country-by-country report" means a report which—

(a) relates to—

(i) a United Kingdom Entity; and

(ii) where applicable, the Constituent Entities in respect of which the United Kingdom Entity is required to prepare Consolidated Financial Statements or would be so required if its equity interests were traded on a public securities exchange; and

(b) contains the information specified in specific or general directions given by the Commissioners.

(2) "United Kingdom Entity" means a Constituent Entity ("UKE") in respect of which conditions A and B are satisfied.

(3) Condition A is satisfied where UKE is resident in the United Kingdom for tax purposes or has a permanent establishment in the United Kingdom.

(4) Condition B is satisfied where there is no other Constituent Entity of the MNE Group—

(a) resident in the United Kingdom for tax purposes; or

(b) which has a permanent establishment in the United Kingdom,

and which is required to prepare Consolidated Financial Statements or would be so required if its equity interests were traded on a public securities exchange and such statements include or would include UKE.

Conditions that apply for the purposes of regulation 3(4)(b) and 3(8)(c)

6. The conditions referred to in regulation 3(4)(b) and 3(8)(c) are—

(a) the Ultimate Parent Entity is not required to file the equivalent of a country-by-country report in the jurisdiction in which it is resident for tax purposes in respect of the accounting period to which the report relates (or where the Ultimate Parent Entity is resident for tax purposes in more than one jurisdiction, no such requirement to file applies in any of those jurisdictions);

(b) the appropriate authority of the jurisdiction in which the Ultimate Parent Entity is resident for tax purposes has not entered into exchange arrangements with Revenue and Customs in respect of the accounting period to which the report relates (or where the Ultimate Parent Entity is resident for tax purposes in more than one jurisdiction, none of the appropriate authorities of those jurisdictions has entered into such arrangements);

(c) the appropriate authority of the jurisdiction in which the Ultimate Parent Entity has filed the equivalent of a country-by-country report has entered into exchange arrangements with Revenue and Customs but—

(i) in respect of the obligation on a UKEG in regulation 3(4), Revenue and Customs has notified the UKEG that the arrangements are not operating effectively; or

(ii) in respect of a CEG intending to file a county-by-country report further to regulation 3(8), the CEG has requested Revenue and Customs to confirm whether or not the

arrangements are operating effectively and Revenue and Customs has notified the CEG that they are not.

Commissioners' directions

7.—(1) The Commissioners must give specific or general directions in respect of—

(a) the content and form of presentation of a CBC report; and

(b) the method for filing a report.

(2) If the Commissioners direct an electronic method for filing a CBC report the directions referred to in paragraph (1) must provide for an electronic validation process.

Form and method of filing of CBC reports

8. A CBC report which must or may be filed under regulation 3 must—

(a) be presented in the form; and

(b) be filed in accordance with the method,

directed by the Commissioners.

CBC report filing presumptions

9.—(1) A CBC report which is purported to be filed otherwise than in accordance with regulation 8 is to be treated as not having been filed.

(2) Where Commissioners direct an electronic method for filing, unless the contrary is proved—

(a) the use of an electronic system is presumed to have resulted in the filing of the CBC report only if this has been successfully recorded as such by the relevant electronic validation process,

(b) the time of filing the CBC report is presumed to be the time recorded as such by the relevant electronic validation process, and

(c) the person delivering the CBC report is presumed to be the person identified as such by any relevant feature of the electronic system.

Reporting entities

10.—(1) For the purposes of section 122(4)(a) of FA 2015, the following are reporting entities—

(a) an Ultimate Parent Entity required to file a country-by-country report by regulation 3(3);

(b) a United Kingdom Entity required to file a United Kingdom country-by-country report by regulation 3(4); and

(c) a Constituent Entity which has filed a country-by-country report further to regulation 3(8).

(2) A CBC report purporting to be filed on behalf of a reporting entity is taken to have been filed by that entity, unless the entity proves that the report was filed without the entity's authority.

Provision of information

11.—(1) The Commissioners may give a general or specific direction to a reporting entity requiring it to provide Revenue and Customs with such information (including copies of any relevant books, documents or other records) as may be specified in the direction for the purposes of determining whether information contained in a CBC report filed by that entity is accurate.

(2) Where a person is directed to provide information, the person must do so—

(a) within such period, being no less than 14 days; and

(b) at such time, by such means and in such form (if any),

as may be specified in the direction.

Penalties for failure to comply with Regulations

12. A person is liable to a penalty of £300 if the person fails to comply with regulation 3(3), regulation 3(4), or regulation 11.

Daily default penalty

13. If—

(a) a penalty under regulation 12 is assessed; and

(b) the failure in question continues after the person has been notified of the assessment,

the person is liable to a further penalty, for each subsequent day on which the failure continues, of an amount (subject to regulation 19) not exceeding £60 for each such day.

Penalties for inaccurate information

14.—(1) Where—

(a) a person provides inaccurate information when filing a CBC report; and

(b) condition A or B is met,

the person is liable to a penalty not exceeding £3,000 in respect of the report to which the inaccuracy relates.

(2) Where—

(a) a person provides inaccurate information when responding to a direction under regulation 11; and

(b) condition A or B is met,

the person is liable to a penalty not exceeding £3,000 in respect of each CBC report to which the inaccuracy relates.

(3) Condition A is that the person knows of the inaccuracy at the time information is provided but does not inform Revenue and Customs at that time.

(4) Condition B is that the person—

(a) discovers the inaccuracy after the information is provided; and

(b) fails to take reasonable steps to inform Revenue and Customs of that discovery.

Matters to be disregarded in relation to liability to penalties

15.—(1) Liability to a penalty under regulation 12, 13 or 14 does not arise if the person otherwise liable to the penalty satisfies Revenue and Customs (or on an appeal notified to the tribunal, the tribunal) that there is a reasonable excuse for the failure or the provision of inaccurate information.

(2) For the purposes of this regulation it is not a reasonable excuse—

(a) that there is an insufficiency of funds to do something; or

(b) that a person relies on another person to do something.

(3) If a person has a reasonable excuse for a failure but the excuse ceases, the person is to be treated as continuing to have the excuse if the failure is remedied without unreasonable delay after the excuse ceases.

Assessment of penalties

16.—(1) If a person becomes liable to a penalty under regulation 12, 13 or 14, an officer of Revenue and Customs may assess the penalty.

(2) If an officer does so, the officer must notify the person of the assessment.

(3) An assessment of a penalty under regulation 12 or 13 must be made within the period of—

(a) 6 years in respect of a failure to comply with regulation 3(3) or 3(4); or

(b) 12 months in respect of a failure to comply with regulation 11,

beginning with the date on which the person became liable to the penalty.

(4) An assessment of a penalty under regulation 14 must be made within the earlier of—

(a) 12 months beginning with the date on which the inaccuracy first came to the attention of an officer of Revenue and Customs; or

(b) 6 years beginning with the date on which the person became liable to the penalty.

Right to appeal against penalty

17. A person may by notice appeal against the assessment of a penalty notified to that person—

(a) on the grounds that liability to the penalty under any of regulations 12, 13 or 14 does not arise; or

(b) as to the amount of a penalty under regulation 13 or 14 .

Procedure on appeal against penalty

18.—(1) Notice of an appeal under regulation 17 must be given—

(a) in writing;

(b) before the end of the period of 30 days beginning with the date on which notification under regulation 16 was given; and

(c) to Revenue and Customs.

(2) It must state the grounds of appeal.

(3) On an appeal under regulation 17(a) that is notified to the tribunal(**a**), the tribunal may confirm or cancel the assessment.

(4) On an appeal under regulation 17(b) that is notified to the tribunal, the tribunal may

(a) confirm the assessment; or

(b) substitute another assessment that the officer of Revenue and Customs had power to make.

(5) Subject to this regulation and regulation 20, the provisions of Part 5 of TMA 1970(**b**) relating to appeals have effect in relation to appeals under regulation 17 as they have effect in relation to an appeal against an assessment to income tax.

Application for increased daily default penalty

19.—(1) Paragraph (2) applies if—

(**a**) See Part 5 of TMA 1970.

(**b**) The Taxes Management Act was relevantly amended by sections 45(1) and 67(2) of the Finance (No. 2) Act 1975 (c. 45); section 68 of the Finance Act 1982 (c. 39); section 156(2) and (4) of the Finance Act 1989 (c. 26); section 199 of and paragraphs 18(1) and (2) of Schedule 19 to the Finance Act 1994 (c. 9); paragraph 28 of Schedule 19 to the Finance Act 1998 (c. 36); section 88 of and paragraph 31 of Schedule 29 to the Finance Act 2001 (c. 9); paragraph 21 of Schedule 1 to the Constitutional Reform Act 2005 (c. 4); paragraph 257(a) and (b) of Schedule 1 to and Part 1 of Schedule 3 to the Income Tax Act 2007 (c. 3); section 119(12)(a) of the Finance Act 2008 (c. 9); paragraph 31 of Schedule 7 to the Taxation (International and Other Provisions) Act 2010 (c. 8); S.I 1994/1813 and 2009/56.

(a) a person is liable to a penalty under regulation 13 and a penalty is assessed under regulation 16; and

(b) the failure in respect of which that assessment is made continues for more than 30 days beginning with the date on which notification of that assessment is given.

(2) Where this paragraph applies, an officer of Revenue and Customs may make an application to the tribunal for permission to assess an increased daily penalty under regulation 12 but must notify the person liable to the penalty of the application at the time of making it.

(3) If the tribunal determines that an increased daily penalty may be assessed then for each applicable day on which the failure continues, the person's liability to a penalty under regulation 13 shall be for the increased amount determined by the tribunal.

(4) The tribunal may not determine an amount exceeding £1000 for each applicable day.

(5) If the tribunal determines an increased daily penalty, Revenue and Customs must notify the person.

(6) The notification under paragraph (5) must specify the future day from which the increased penalty is to apply.

(7) That day and any subsequent day is an "applicable day" for the purposes of paragraph (3) and (4).

Payment and enforcement of penalties

20.—(1) A penalty under these Regulations must be paid before the end of the period of 30 days beginning with the date mentioned in paragraph (2).

(2) That date is—

(a) the date on which the assessment of the penalty under regulation 16 is notified in respect of the penalty; or

(b) if a notice of appeal under regulation 17 is given, the date on which—

(i) the appeal is finally determined (but the penalty is not cancelled or withdrawn); or;

(ii) the appeal is withdrawn.

(3) A penalty under these Regulations may be enforced as if it were income tax charged in an assessment and due and payable.

Anti-avoidance

21. If—

(a) a person enters into any arrangements; and

(b) the main purpose, or one of the main purposes, of the person in entering into the arrangements is to avoid any obligation under these Regulations,

these Regulations are to have effect as if the arrangements had not been entered into.

Charlie Elphicke
Alun Cairns

26th February 2016 Two of the Lords Commissioners of her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations give effect to the OECD Country-by-Country Reporting guidance set out in "Transfer Pricing Documentation and Country-by-Country Reporting, Action 13: 2015 Final Report" published on 5th October 2015. The document is available on the OECD website at http://www.oecd.org/tax/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report-9789264241480-en.htm. The guidance forms part of the wider OECD Base Erosion and Profit Shifting Action Plan (http://www.oecd.org/ctp/BEPSActionPlan.pdf) adopted by the OECD and G20 countries in respect of the provision of information concerning high-level transfer pricing.

Regulation 1 provides for citation and commencement.

Regulation 2 defines terms used in the Regulations including by reference to definitions in the OECD model legislation which is contained in the report published on 5th October 2015.

Regulation 3 sets out requirements for ultimate parent entities in the United Kingdom and entities of multi-national groups with a connection to the United Kingdom to file country-by-country reports or United Kingdom country-by-country reports with Her Majesty's Revenue and Customs in specified circumstances. It also provides that other entities of multi-national groups may file country-by-country reports where specified conditions are met.

Regulation 4 sets out the threshold which triggers the requirement or ability for entities to file country-by-country reports or United Kingdom country-by-country reports with Her Majesty's Revenue and Customs.

Regulation 5 sets out the definitions of "United Kingdom country-by-country report" and "United Kingdom entity".

Regulation 6 sets out circumstances in which United Kingdom entities are required to file United Kingdom country-by-country reports and in which other entities may file country-by-country reports with Her Majesty's Revenue and Customs.

Regulation 7 requires the Commissioners for Her Majesty's Revenue and Customs to make specific or general directions regarding the filing of country-by-country reports. By regulation 8, those reports must be filed in accordance with such directions.

Regulation 9 sets out presumptions that will apply in respect of the filing of country-by-country reports.

Regulation 10 identifies the reporting entities which may be directed to provide information under regulation 11. By regulation 11, the Commissioners for Her Majesty's Revenue and Customs may issue a direction requiring entities to provide information to determine the accuracy of a country-by-country report.

Regulations 12 to 20 make provision for penalties for breaches of obligations imposed by the Regulations including provision for appeals and enforcement.

Regulation 21 is an anti-avoidance provision.

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.

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