EXPLANATORY MEMORANDUM TO

THE TRANSFER PRICING RECORDS REGULATIONS 2023

2023 No. 818

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 This instrument specifies the form and contents of specified documentation that certain United Kingdom (UK) businesses, who are part of large multinational enterprise (MNE) groups with global consolidated revenues of €750 million or more, must keep and preserve to support their transfer pricing positions. This instrument brings the UK record keeping requirements for transfer pricing in line with the global standard as set out in the Organisation for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022.

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

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

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Record keeping requirements for taxpayers required to submit a tax return are set out in section 12B of the Taxes Management Act 1970 and paragraph 21 of Schedule 18 to the Finance Act 1998. This instrument specifies the form in which specific information relating to transfer pricing is required to be kept and preserved by UK businesses that are part of a MNE group with global revenues of €750 million or more.

6.2 This instrument also allows HMRC, in a notice published by the Commissioners for HMRC, to require that affected taxpayers maintain supplementary information relating to the preparation of the Local File. It is envisaged that this power will be exercised to impose a requirement to keep and preserve a Summary Audit Trail

(SAT). The SAT will be further consulted on in 2023 prior to introduction. The notices described above will be published on the GOV.UK website. A person unable to access the notices electronically will be able to access them in hard copy by post free of charge on application to HMRC by telephone (0300 200 3410).

6.3 This is the first use of the powers under section 12B of the Taxes Management Act 1970 and paragraph 21 of Schedule 18 to the Finance Act 1998. Paragraph 7 of Schedule 5 to the Finance (No. 2) Act 2023 provides that regulations made under those powers, by virtue of the amendments made by the Finance (No. 2) Act 2023, may have effect in relation to such accounting periods or tax years beginning on or after 1 April 2023 as are specified in the regulations.

7. Policy background

What is being done and why?

7.1 Transfer pricing is a means of pricing transactions between connected parties, based on the internationally recognised arm's length principle which seeks to determine what the price would have been if the transactions had been carried out under comparable conditions by independent parties. UK businesses are already required to keep and retain sufficient records to demonstrate that their tax returns are complete and accurate, including in respect of any figures affected by the transfer pricing rules. Previous legislation did not prescribe specific records that UK businesses must prepare or the format of those records.

7.2 In October 2015 the OECD published a final report on Transfer Pricing Documentation and Country-by-Country Reporting (Action 13 of the Base Erosion and Profit Shifting Action Plan). The report set out a three-tiered standardised approach to transfer pricing documentation, incorporating a Master File containing high-level information on the global operations and transfer pricing policies of the MNE group and a Local File referring specifically to material controlled transactions of the local taxpayer. Action 13 also introduced a minimum standard covering country-by-country reporting of specific financial data. The UK introduced country-by-country reporting regulations in 2016, but did not initially introduce Master File and Local File requirements because the UK already had broad record keeping requirements.

7.3 Following consultation (see section 10) the UK is now implementing the Master File and Local File requirements to align with this global standard. Experience has shown that the absence of specific transfer pricing documentation requirements, and supporting guidance, has created a degree of uncertainty for UK businesses regarding the appropriate transfer pricing documentation they need to keep, leading to inconsistency of approach.

7.4 This measure will provide certainty for taxpayers and will enable HMRC to carry out more informed risk assessments, to target resources more efficiently, and to reduce the time taken to establish the facts in compliance interventions. Moreover, having to clearly report transfer pricing information within specific documentation will result in businesses having a clearer and more robust transfer pricing position to inform the filing of their return. This may encourage and incentivise businesses that adopt higher risk transfer pricing positions to change their behaviour.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 No consolidation is required for this instrument.

10. Consultation outcome

10.1 The consultation on Transfer Pricing Documentation lasted for ten weeks and ran from 23 March 2021 to 1 June 2021. The purpose of the consultation was to seek views on HMRC's proposal to clarify and strengthen the transfer pricing documentation requirements for UK businesses. A consultation period lasting ten weeks was considered appropriate as the primary audience for the consultation exercise was felt to be sufficiently expert, and familiar with the OECD global standard, not to need a longer period in which to respond.

10.2 HMRC's summary of the responses was published on 30 November 2021. (https://www.gov.uk/government/consultations/transfer-pricing-documentation)

10.3 39 responses to the consultation were received. Many respondents suggested that any new Master File or Local File requirements should be aligned with the OECD guidelines, in view of the additional compliance burden associated with local territory variations. Respondents indicated that most MNE groups within scope already prepare a Master File, and many follow OECD principles in preparing a UK Local File although there is likely to be some variation in detail and format of the latter.

10.4 Following this consultation, HMRC further consulted on the draft regulations. This was a technical consultation concerning the regulations themselves and due to the extensive previous consultation and the primary audience for this technical consultation it ran for a shorter period from 21 December 2022 to 31 January 2023.

10.5 Ten responses to the technical consultation were received. Many responses welcomed alignment with the OECD global standard. Several responses asked for further clarity on certain practical aspects to be addressed via additional guidance, which HMRC is publishing in its International Manual (see section 11). Following this consultation, the regulations were updated to reflect the changes that were made to the draft Finance Bill clauses to include partnerships and trusts. The regulations have also been updated to reflect the UK domestic definition of 'controlled transactions' by reference to Part 4 Taxation (International and Other Provisions) Act 2010. This is a definition that is familiar to UK taxpayers and reflects the way that transfer pricing is implemented in respect of UK businesses and simplifies this definition in the regulations.

11. Guidance

11.1 Details of the OECD global standard approach to transfer pricing documentation are set out in Annex I and II to Chapter V of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022 (https://read.oecd-ilibrary.org/taxation/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2022_0e655865-en#page547).

11.2 HMRC has also published supplementary guidance in its International Manual, which is available online at https://www.gov.uk/hmrc-internal-manuals/international-manual.

12. Impact

12.1 The impact on business, charities or voluntary bodies is expected to be negligible. There is no impact on charities or voluntary bodies and there is expected to be a negligible impact on approximately 3,500 businesses by formally requiring transfer pricing documentation to be prepared in line with this instrument.

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

12.3 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.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that it will be monitored and reviewed by HMRC in line with normal policy.

14.2 As this instrument is not made by a Minister of the Crown, no review clause is required.

15. Contact

15.1 Katy Miles at HMRC (Telephone: 03000 532 992 or email: katy.miles@hmrc.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Andrew Page, Deputy Director for Transfer Pricing (Business, Assets and International), 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.