STATUTORY INSTRUMENTS

2017 No. 497

TAXES

The Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) (Amendment) Regulations 2017

Made - - - -	*29th March 2017*
Laid before the House of Commons - - - -	*30th March 2017*
Coming into force - -	*20th April 2017*

The Treasury are designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to administrative cooperation in the field of taxation.

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, section 136 of the Finance Act 2002(**3**) and section 122 of Finance Act 2015(**4**), make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) (Amendment) Regulations 2017 and come into force on 20th April 2017.

(2) These Regulations have effect for and in connection with the implementation of—

(a) obligations under Council Directive 2011/16/EU on administrative cooperation in the field of taxation(**5**); and

(b) the OECD's guidance on country-by-country reporting(**6**).

(**1**) The European Communities (Designation) Order 2012, S.I. 2012/1759.
(**2**) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 1) and Part 1 of Schedule 1 to the European Union (Amendment) Act 2008 (c. 7).
(**3**) 2002 c. 23.
(**4**) 2015 c. 11.
(**5**) OJ No L 64, 11.3.2011, p1, relevantly amended by Council Directive 2016/881/EU, OJ No L 146, 03.06.2016, p8.
(**6**) The OECD has published "Guidance on the Implementation of Country-by-Country Reporting" in October 2016 which modifies its 2015 guidance on country-by-country reporting to apply reporting requirements to partnerships. The guidance is available on the OECD website at http://www.oecd.org/tax/exchange-of-tax-information/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf. A paper copy may be obtained from a range of distributors including the OECD Conference Centre, 2 rue Andre Pascal, 75775 Paris Cedex 16, France, Tel: 33 (0) 1 45 24 79 77, Email: oecd.bookshop@oecd.org.

Amendment to the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016

2. These Regulations amend the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016(**7**).

Amendment of regulation 2 (interpretation)

3.—(1) In regulation 2(1)—

(a) in the definition of "filing deadline" omit "accounting".

(b) after the definition of "OECD model legislation" insert—

""partnership" means a partnership governed by the Partnership Act 1890(**8**), the Limited Partnerships Act 1907(**9**) or the Limited Liability Partnerships Act 2000(**10**);";

and

(c) for the definition of "threshold requirement" substitute—

""threshold requirement" has the meaning given by paragraphs (2) to (4) of regulation 3;".

(2) In regulation 2(2)—

(a) omit "and"; and

(b) insert after "Constituent Entity" "; and "International Agreement"".

(3) For regulation 2(4) substitute—

"(4) "Ultimate Parent Entity" has the same meaning in these Regulations as it does in Article 1(6) of the OECD model legislation except with the following modifications to that Article—

(a) where an Ultimate Parent Entity is not a partnership, for the purposes of regulations 3A and 10(1)(a) for "a Constituent Entity of an MNE Group that meets the following criteria" there is treated as substituted "a Constituent Entity of an MNE Group resident in the United Kingdom for tax purposes that meets the following criteria"; and

(b) where an Ultimate Parent Entity is a partnership, for the purposes of regulations 3A and 10(1)(b) for "its jurisdiction of tax residence" there is treated as substituted "the jurisdiction under whose laws it is formed or organised" in both places where it occurs.".

Amendment of regulation 3 (filing of CBC reports)

4. For regulation 3 substitute—

"**Filing of CBC reports: general provisions**

3.—(1) Regulations 3A, 3B, 3C and 3D apply where the Consolidated Financial Statements of an MNE Group ("G") meet the threshold requirement for a period ("P") where P—

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

(**7**) S.I. 2016/237.
(**8**) 1890 c. 39.
(**9**) 1907 c. 24.
(**10**) 2000 c. 12.

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

(2) In paragraph (1) the "threshold requirement" means G has a total consolidated group revenue of €750 million—

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

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

(3) Where G draws up, or would draw up, its Consolidated Financial Statements in a currency other than euros, the reference to €750 million in paragraph (2) has effect as if it were a reference to the equivalent in that currency at the average exchange rate for P.

(4) When P is a period of more or less than 12 months, the amount of €750million in paragraph (2) (or the equivalent under paragraph (3)) is increased or decreased proportionately.

(5) In regulations 3A, 3B, 3C and 3D, "G" is the MNE Group.

(6) In regulations 3A, 3B, 3C and 3D, "P+1" is the period immediately following P in respect of which G prepares, or would prepare Consolidated Financial Statements.

Filing of country-by-country reports and notification by Ultimate Parent Entities

3A.—(1) Each Ultimate Parent Entity of G must file a country-by-country report in respect of P+1 by the filing deadline.

(2) Subject to paragraph (4) each Ultimate Parent Entity of G must notify to Revenue and Customs—

(a) that it is an Ultimate Parent Entity of G responsible for filing a country-by-county report in respect of P+1; and

(b) the names and unique taxpayer references of all of its Constituent Entities—

(i) which are resident in the United Kingdom for tax purposes;

(ii) which have a permanent establishment in the United Kingdom; or

(iii) which are partnerships.

(3) The notification required by paragraph (2) must be made by whichever is the later of the last day of P+1 or 1st September 2017 ("the deadline date").

(4) An Ultimate Parent Entity of G ("UPEG1") is not required to comply with paragraph (2) if before the deadline date—

(a) another Ultimate Parent Entity of G ("UPEG2") has provided a notification in accordance with paragraph (2) and that notification includes the information required to be contained in the notification otherwise to be provided by UPEG1; and

(b) UPEG1 provides details to Revenue and Customs of—

(i) the name of UPEG2; and

(ii) the date the notification by UPEG2 was provided.

(5) Where an Ultimate Parent Entity of G is a partnership the requirements imposed on it by this regulation must be complied with by the partner of the Ultimate Parent Entity of G who is required to deliver a return under section 12AA of TMA 1970(**11**).

(**11**) 1970 c. 9. Section 12AA was inserted by the Finance Act 1994 (c. 9).

Filing of CBC reports by United Kingdom Entities

3B.—(1) This regulation applies to each United Kingdom Entity of G ("UKEG") if—

(a) regulation 3A does not apply to the UKEG; and

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

(2) The requirements in paragraphs (3) and (4) do not apply if exception A or exception B applies.

(3) A UKEG must—

(a) request from its Ultimate Parent Entity all the information ("filing information") that the UKEG would need in order to file a country-by-country report in respect of P+1 before the filing deadline; and

(b) if the UKEG receives the filing information, file a country-by-country report in respect of P+1 by the filing deadline.

(4) If a UKEG does not receive the filing information before the filing deadline, it must by the filing deadline —

(a) notify Revenue and Customs in writing that its Ultimate Parent Entity has not provided the filing information; and

(b) file a United Kingdom country-by-country report in respect of P+1.

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

(a) a Constituent Entity of G has filed a country-by-country report in accordance with paragraph (3)(b) or regulation 3D in respect of P+1 and that report includes the information required to be contained in the CBC report otherwise to be filed by the UKEG; and

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

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

(ii) the date the report was filed.

(6) 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 P+1 and that report includes the information required to be contained in the CBC 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 the Constituent Entity is resident for tax purposes;

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

(iii) the date the report was filed.

Notification by United Kingdom Entities

3C.—(1) This regulation applies to each United Kingdom Entity of G ("UKEG") if regulation 3A does not apply to the UKEG.