STATUTORY INSTRUMENTS

2016 No. 237

TAXES

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

Made - - - -	*26th February 2016*
Laid before the House of Commons - - - -	*26th February 2016*
Coming into force - -	*18th March 2016*

The Treasury make these Regulations in exercise of the powers conferred by section 136 of the Finance Act 2002(**1**) and section 122 of the Finance Act 2015(**2**):

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;

(**1**) 2002 c. 23.
(**2**) 2015 c.11.

"OECD model legislation" means the model legislation in the OECD Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 – 2015 Final Report(**3**);

"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

(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—

(**3**) 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 5thOctober 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.

(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.