

Statutory Document No. 2017/ 0091

*Income Tax Act 1970*

## INCOME TAX (COUNTRY-BY-COUNTRY REPORTING) REGULATIONS 2017

*Approved by Tynwald:* 21 March 2017  
*Coming into Operation:* 24 March 2017

The Treasury makes the following Regulations under section 104D of the Income Tax Act 1970.

### 1 Title

These Regulations are the Income Tax (Country-by-Country Reporting) Regulations 2017.

### 2 Commencement

If approved by Tynwald<sup>1</sup>, these Regulations come into operation on 24 March 2017 for reporting fiscal years commencing on or after 1 January 2017.

### 3 Interpretation

In these Regulations —

“**consolidated financial statements**” means the financial statements of an MNE group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent entity and the constituent entities are presented as those of a single economic entity;

“**constituent entity**” means —

- (a) any separate business unit of an MNE group that is included in the consolidated financial statements of the MNE group for financial reporting purposes, or would be so included if equity interests in such business unit of an MNE group were traded on a public securities exchange;

<sup>1</sup> Tynwald approval is required by section 104D(5) of the Income Tax Act 1970

- (b) any such business unit that is excluded from the MNE group's consolidated financial statements solely on size or materiality grounds; and
- (c) any permanent establishment of any separate business unit of the MNE group included in (a) or (b) above provided the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

**“excluded MNE group”** means, with respect to any fiscal year of the group, a group having total consolidated group revenue of less than 750 million Euro during the fiscal year immediately preceding the reporting fiscal year as reflected in its consolidated financial statements for such preceding fiscal year;

**“fiscal year”** means an annual accounting period with respect to which the ultimate parent entity of the MNE group prepares its financial statements;

**“group”** means a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises were traded on a public securities exchange;

**“international arrangement”** means —

- (a) the Convention on Mutual Administrative Assistance in Tax Matters signed on behalf of the United Kingdom on 24<sup>th</sup> May 2007 as it is extended to the Isle of Man; and
- (b) any international arrangement applying to the Isle of Man whenever made which contains a clause providing for automatic exchange of information;

**“MNE”** means a multinational enterprise;

**“MNE group”** means any group that —

- (a) includes 2 or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction; and
- (b) is not an excluded MNE group;

**“qualifying competent authority agreement”** means an agreement —

- (a) that is between authorised representatives of those jurisdictions that are parties to an international arrangement; and

- (b) that requires the automatic exchange of country-by-country reports between the party jurisdictions;

**“reporting entity”** means the constituent entity that is required to file a country-by-country report conforming to the requirements in regulation 7 in its jurisdiction of tax residence on behalf of the MNE group. The reporting entity may be the ultimate parent entity, the surrogate parent entity, or any entity described in paragraph (2) of regulation 5;

**“reporting fiscal year”** means that fiscal year the financial and operational results of which are reflected in the country-by-country report defined in regulation 7;

**“surrogate parent entity”** means one constituent entity of the MNE group that has been appointed by such MNE group, as a sole substitute for the ultimate parent entity, to file the country-by-country report in that constituent entity’s jurisdiction of tax residence, on behalf of such MNE group, when one or more of the conditions set out in sub-paragraph (b) of paragraph (2) of regulation 5 applies;

**“systemic failure”** with respect to a jurisdiction means that a jurisdiction has a qualifying competent authority agreement in effect with the Isle of Man, but has suspended automatic exchange (for reasons other than those that are in accordance with the terms of that agreement) or otherwise persistently failed to automatically provide to the Isle of Man country-by-country reports in its possession of MNE groups that have constituent entities in the Isle of Man;

**“ultimate parent entity”** means a constituent entity of an MNE group that meets the following criteria –

- (a) it owns directly or indirectly a sufficient interest in one or more other constituent entities of such MNE group such that it is required to prepare consolidated financial statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence; and
- (b) there is no other constituent entity of such MNE group that owns directly or indirectly an interest described in paragraph (a) in the first mentioned constituent entity.

#### 4 Purpose of the Regulations etc.

The Regulations have effect for, and in connection with, the implementation of the obligations under the international arrangement, the information from which will be automatically exchanged in accordance with the qualifying competent authority agreement.

## 5 Filing obligation

- (1) Each ultimate parent entity of an MNE group that is resident for tax purposes in the Isle of Man shall file a country-by-country report conforming to the requirements of regulation 7 with the Assessor of Income Tax with respect to its reporting fiscal year on or before the date specified in regulation 8.
- (2) A constituent entity which is not the ultimate parent entity of an MNE group shall file a country-by-country report conforming to the requirements of regulation 7 with the Assessor of Income Tax with respect to the reporting fiscal year of an MNE group of which it is a constituent entity, on or before the date specified in regulation 8, if the following criteria are satisfied –
  - (a) the entity is resident in the Isle of Man for tax purposes; and
  - (b) one of the following conditions applies –
    - (i) the ultimate parent entity of the MNE group is not obligated to file a country-by-country report in its jurisdiction of tax residence; or
    - (ii) the jurisdiction in which the ultimate parent entity is resident for tax purposes has a current international arrangement to which the Isle of Man is a party but does not have a qualifying competent authority agreement in effect to which the Isle of Man is a party by the time specified in regulation 8 for filing the country-by-country report for the reporting fiscal year; or
    - (iii) there has been a systemic failure of the jurisdiction of tax residence of the ultimate parent entity that has been notified by the Assessor of Income Tax to the constituent entity resident for tax purposes in the Isle of Man.
- (3) Where there is more than one constituent entity of the same MNE group that is resident for tax purposes in the Isle of Man and one or more of the conditions set out in paragraph (2)(b) applies, the MNE group may designate one such constituent entity to file the country-by-country report conforming to the requirements of regulation 7 with the Assessor of Income Tax with respect to any reporting fiscal year on or before the date specified in regulation 8 and to notify the Assessor of Income Tax that the filing is intended to satisfy the filing requirement of all the constituent entities of such MNE group that are resident for tax purposes in the Isle of Man.
- (4) Notwithstanding the provisions of paragraph (2), when one or more of the conditions set out in sub-paragraph (b) of paragraph (2) of this regulation applies, an entity described in paragraph (2) shall not be required to file a country-by country report with the Assessor of Income Tax with respect to any reporting fiscal year if the MNE group of which

it is a constituent entity has made available a country-by-country report conforming to the requirements of regulation 7 with respect to such fiscal year through a surrogate parent entity that files that country-by-country report with the tax authority of its jurisdiction of tax residence on or before the date specified in regulation 8 and that satisfies the following conditions –

- (a) the jurisdiction of tax residence of the surrogate parent entity requires filing of country-by-country reports conforming to the requirements of regulation 7;
- (b) the jurisdiction of tax residence of the surrogate parent entity has a qualifying competent authority agreement in effect to which the Isle of Man is a party by the time specified in regulation 8 for filing the country-by-country report for the reporting fiscal year;
- (c) the jurisdiction of tax residence of the surrogate parent entity has not notified the Assessor of Income Tax of a systemic failure;
- (d) the jurisdiction of tax residence of the surrogate parent entity has been notified in accordance with paragraph (1) of regulation 6 by the constituent entity resident for tax purposes in its jurisdiction that it is the surrogate parent entity; and
- (e) a notification has been provided to the Assessor of Income Tax in accordance with paragraph (2) of regulation 6.

## **6 Notification**

- (1) Any constituent entity of an MNE group that is resident for tax purposes in the Isle of Man shall notify the Assessor of Income Tax whether it is the ultimate parent entity or the surrogate parent entity by completing a registration form to enable filing using the method prescribed in regulation 7(3) no later than 6 months following the last day of the first reporting fiscal year of such MNE group.
- (2) Where a constituent entity of an MNE group that is resident for tax purposes in the Isle of Man is not the ultimate parent entity nor the surrogate parent entity, it shall notify the Assessor of Income Tax of the identity and tax residence of the reporting entity, no later than one year and a day following the last day of the reporting fiscal year of such MNE group.
- (3) The notification under paragraph (2) shall be made to the Assessor of Income Tax by the Isle of Man constituent entity in the required form.

## **7 Country-by-country report**

- (1) For the purposes of these Regulations, a country-by-country report with respect to an MNE group is a report containing –

- (a) aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the MNE group operates;
  - (b) an identification of each constituent entity of the MNE group setting out the jurisdiction of tax residence of such constituent entity, and where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such constituent entity is organised, and the nature of the main business activity or activities of such constituent entity.
- (2) The country-by-country report shall be filed in a form identical to and applying the definitions and instructions contained in the standard template set out at Annex III of the OECD's<sup>2</sup> Transfer Pricing Documentation and Country-by-Country Reporting Action 13: 2015 Final Report.
- (3) The report must be made electronically using the Online Information Providers Service, that is to say the Information Providers Service which is available through –
  - (a) the Income Tax Services page of the Isle of Man Government website ([www.gov.im](http://www.gov.im)); or
  - (b) such other website as may be made available by the Treasury for use.
- (4) The report must be made in the format prescribed and published from time to time.
- (5) A return which is made otherwise than in accordance with paragraphs (3) and (4) is treated as not having been made.

## 8 Time for filing

The country-by-country report required by these Regulations shall be filed no later than 12 months and a day after the last day of the reporting fiscal year of the MNE group.

## 9 Voluntary filing

Reporting entities may voluntarily submit country-by-country reports to the Assessor for reporting fiscal years commencing on or after 1 January 2016.

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<sup>2</sup> [http://www.keepeek.com/Digital-Asset-Management/oced/taxation/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report\\_9789264241480-en#page32](http://www.keepeek.com/Digital-Asset-Management/oced/taxation/transfer-pricing-documentation-and-country-by-country-reporting-action-13-2015-final-report_9789264241480-en#page32)

**10 Use and confidentiality of country-by-country report information**

- (1) The Assessor shall use the country-by-country report for the purposes of assessing high-level transfer pricing risks and other base erosion and profit shifting related risks in the Isle of Man, including assessing the risk of non-compliance by members of the MNE group with applicable transfer pricing rules, and where appropriate economic and statistical analysis. Transfer pricing adjustments by the Assessor will not be based on the country-by-country report.
- (2) The Assessor of Income Tax shall preserve the confidentiality of the information contained in the country-by-country report at least to the same extent that would apply if such information were provided to the Assessor under the provisions of an international arrangement.

**11 Penalties for failure to comply with Regulations**

A person is liable to a penalty of £300 if the person fails to comply with any obligation under these Regulations.

**12 Daily default penalty**

If —

- (a) a penalty under regulation 11 is imposed; and
- (b) the failure in question continues after the person has been notified of the penalty;

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

**13 Penalties for inaccurate information**

- (1) A person is liable to a penalty not exceeding £3,000 if —
  - (a) in complying with an obligation under regulation 7 the person provides inaccurate information; and
  - (b) condition A, B or C is met.
- (2) Condition A is that the inaccuracy is deliberate on the part of the person.
- (3) Condition B is that the person knows of the inaccuracy at the time the information is provided but does not inform the Assessor at that time.
- (4) Condition C is that the person —
  - (a) discovers the inaccuracy some time later; and
  - (b) fails to take reasonable steps to inform the Assessor.

**14 Penalties - supplementary**

- (1) Liability to a penalty under regulation 11 or 12 does not arise if the person satisfies the Assessor or (on appeal notified to the Income Tax Commissioners) the Income Tax Commissioners that there is a reasonable excuse for the failure.
- (2) For the purposes of this regulation neither of the following is a reasonable excuse —
  - (a) that there is an insufficiency of funds to do something;
  - (b) that the person relies upon another person to do something.
- (3) If the person has a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

**15 Imposition of penalties**

- (1) If a person becomes liable to a penalty under regulation 11 to 13 the Assessor may impose the penalty at any time.
- (2) If the Assessor does so, he or she must notify the person.

**16 Right to appeal against penalty**

- (1) A person upon whom a penalty is imposed may appeal against it on the grounds that liability to a penalty under regulations 11 to 13 does not arise.
- (2) A person upon whom a penalty is imposed may appeal against its amount.

**17 Procedure on appeal against penalty**

- (1) Notice of an appeal under regulation 16 must be given to the Assessor —
  - (a) in writing; and
  - (b) before the end of the period of 30 days beginning with the date on which the notification under regulation 15 was given.
- (2) It must state the grounds of appeal.
- (3) On an appeal under regulation 16(1) that is notified to the Income Tax Commissioners, the Commissioners may confirm or cancel the penalty.
- (4) On an appeal under regulation 16(2) that is notified to the Income Tax Commissioners, the Commissioners may —
  - (a) confirm the penalty; or
  - (b) substitute another penalty that the Assessor has power to impose.



- (5) Subject to this regulation and regulation 18, the provisions of section 87 of the Income Tax Act 1970 relating to appeals have effect in relation to appeals under regulation 16 as they have effect in relation to an appeal against an assessment to income tax.

## **18 Increased daily default penalty**

- (1) This paragraph applies if —
- (a) a penalty arising under regulation 12 has been imposed under regulation 15;
  - (b) the failure in respect of which that penalty was imposed continues for more than 30 days beginning with the date on which notification of that penalty is given; and
  - (c) the person has been told that an application may be made under this paragraph for an increased daily penalty to be imposed.
- (2) If this regulation applies, the Assessor may make an application to the Income Tax Commissioners for an increased daily penalty to be imposed on the person.
- (3) If the Commissioners decide that an increased daily penalty should be imposed then for each applicable day on which the failure continues —
- (a) the person is not liable to a penalty under regulation 12 in respect of the failure; and
  - (b) the person is liable instead to a penalty under this regulation of an amount determined by the Commissioners.
- (4) The Commissioners may not determine an amount exceeding £1,000 for each applicable day.
- (5) If a person becomes liable to a penalty under this regulation, the Assessor must notify the person.
- (6) The notification must specify the day from which the increased penalty is to apply.
- (7) That day and any subsequent day is an applicable day for the purposes of this regulation.

## **19 Enforcement of penalties**

- (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 penalty is imposed under regulation 15 or notification under regulation 18(5) is given in respect of the penalty; or

- (b) if a notice of appeal under regulation 17 is given, the date on which the appeal is finally determined or withdrawn.
- (3) A penalty under these Regulations may be enforced as if it were income tax charged in an assessment and due and payable.

## **20 Supplementary – anti-avoidance**

If –

- (a) a person enters into 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.

**MADE 22<sup>ND</sup> FEBRUARY 2017**

**A L CANNAN**  
*Minister for the Treasury*

*EXPLANATORY NOTE*

*(This note is not part of the Regulations)*

These 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 5<sup>th</sup> October 2015.

Regulations 1, 2 and 3 provide the title, commencement and interpretation. They identify the arrangements to which the regulations have effect.

Regulation 4 provides that the purpose of the regulations is to implement country-by-country reporting.

Regulation 5 sets out the requirements for ultimate parent entities of multi-national groups in the Isle of Man and constituent entities of multi-national groups in the Isle of Man to file country-by-country reports to the Assessor and modifies the requirements in specified cases.

Regulation 6 concerns notification to the Assessor by ultimate parent entities of multi-national groups in the Isle of Man and constituent entities of multi-national groups in the Isle of Man.

Regulations 7 and 8 make provision as to the form, manner and timing of the report and require reporting entities to make the return electronically in respect of every reporting fiscal year.

Regulation 9 allows reporting entities to file voluntarily a country-by-country report for reporting fiscal years commencing on or after 1 January 2016.

Regulation 10 sets out how the information received by the Assessor shall be used.

Regulations 11 – 19 make provision for penalties for breaches of obligations imposed by the Regulations and for providing inaccurate information as well as provision for appeals and enforcement.

Regulation 20 contains an anti-avoidance provision.